

94
No. 2412

United States
Circuit Court of Appeals

For the Ninth Circuit.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, a Corporation,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.


Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

JUL - 1 1914

F. D. Monckton,

Clerk,



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Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

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~~or doubtful matters appearing in the original certified record are~~
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Names and Addresses of Attorneys.

For Plaintiff in Error, San Pedro, Los Angeles &
Salt Lake Railroad Company:

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For Defendant in Error, The United States of America:

ALBERT SCHOONOVER, Esq., U. S. Attorney, Los Angeles, California;

MONROE C. LIST, Esq., Special Assistant U. S. Attorney, c/o Interstate Commerce Commission, Washington, D. C.;

HARRY R. ARCHIBALD, Esq., Assistant U. S. Attorney, Los Angeles, California.

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*Page-number appearing at foot of page of original certified Record.

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Writ of Error [Original].

United States of America,—ss.

The President of the United States, to the Hon.
OLIN WELLBORN, Judge of the United
States District Court for the Southern District
of California, Southern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, between San
Pedro, Los Angeles & Salt Lake Railroad Company,
plaintiff in error, and The United States of Amer-
ica, defendant in error, a manifest error hath hap-

pened, to the damage of San Pedro, Los Angeles & Salt Lake Railroad Company, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that [4] you have the same at San Francisco, in the State of California, where said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 3d day of April, 1914.

[Seal]

WM. M. VAN DYKE,

Clerk of the United States District Court for the Southern District of California, Southern Division.

By Chas. N. Williams,
Deputy Clerk.

Allowed this 3d day of April, 1914.

OLIN WELLBORN,
United States Judge.

I hereby certify that a copy of the within Writ of Error was on the 3d day of April, 1914, lodged in the clerk's office of the said United States District Court for the Southern District of California, Southern Division, for said defendant in error.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern Dist. of California, So. Division.

By Chas. N. Williams,
Deputy Clerk. [5]

[Endorsed]: Nos. 106 and 243 Civil. U. S. District Court, Ninth District, Southern District of California. The United States of America vs. San Pedro, Los Angeles & Salt Lake Railroad Co., Defendant. Writ of Error. Filed Apr. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [6]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Citation in Error [Original].

United States of America, to the United States of
America, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the day this citation bears date, pursuant to Writ of Error filed in the clerk's office of the United States District Court for the Southern District of California, Southern Division, sitting at Los Angeles, wherein San Pedro, Los Angeles & Salt Lake Railroad Company, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. OLIN WELLBORN, Judge of the United States District Court, this 3d day of April, 1914.

OLIN WELLBORN,
U. S. District Judge. [7]

Service of the within Citation is hereby admitted, and a copy thereof accepted, this 3d day of April, 1914.

ALBERT SCHOONOVER,
HARRY R. ARCHBALD,
Attorneys for Plaintiff. [8]

[Endorsed]: Nos. 106 and 243 Civil. U. S. District Court, Ninth District, Southern District of California. The United States of America vs. San Pedro, Los Angeles & Salt Lake Railroad Co. Citation in Error. Filed Apr. 3, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [9]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant. [10]

[Complaint in Case No. 106.]

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

No. —.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Now comes the United States of America, by Aloysius I. McCormick, United States Attorney for the Southern District of California, and brings this action on behalf of the United States against the San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and doing business under the laws of the State of Utah, and having an office and place of business at Kelso in the State of California; this action being brought upon suggestion of the Attorney General of the United States at the request

of the Interstate Commerce Commission, and upon information furnished by said Commission. [11]

FOR A FIRST CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a corporation and a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, during the twenty-four hour period beginning at the hour of 8:00 o'clock, A. M., on January 19, 1911, at its office and station at Kelso, in the State of California, and within the jurisdiction of this court, required and permitted its certain telegraph operator and employee, to wit, J. N. Grandee, to be and remain on duty for a longer period than nine hours in said twenty-four hour period, to wit, from said hour of 8:00 o'clock, A. M., on January 19, 1911, to the hour of 8:00 o'clock, P. M., on said date.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employee, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[12]

FOR A SECOND CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein a corporation and a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, during the twenty-four hour period beginning at the hour of 8:00 o'clock P. M., on January 19, 1911, at its office and station at Kelso, in the State of California, and within the jurisdiction of this court, required and permitted its certain telegraph operator and employee, to wit, W. T. Dugan to be and remain on duty for a longer period than nine hours in said twenty-four hour period, to wit, from said hour of 8:00 o'clock, P. M. on January 19, 1911, to the hour of 8:00 o'clock, A. M., on January 20, 1911.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employee, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affect-

ing the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[13]

FOR A THIRD CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a corporation and a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, during the twenty-four hour period beginning at the hour of 8:00 o'clock P. M., on January 20, 1911, at its office and station at Kelso, in the State of California, and within the jurisdiction of this court, required and permitted its certain telegraph operator and employee, to wit, W. T. Dugan, to be and remain on duty for a longer period than nine hours in said twenty-four hour period, to wit, from said hour of 8:00 o'clock P. M., on January 20, 1911, to the hour of 8:00 o'clock A. M., on January 21, 1911.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said employee, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph

or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[14]

FOR A FOURTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a corporation and a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, during the twenty-four hour period beginning at the hour of 2:00 P. M., on January 18, 1911, at its office and station at Otis, in the State of California, and within the jurisdiction of this court, required and permitted its certain telegraph operator and employee, to wit, J. B. Foster, to be and remain on duty for a longer period than nine hours in said twenty-four hour period, to wit, from said hour of 2:00 o'clock P. M., on January 18, 1911, to the hour of 4:30 o'clock A. M., on January 19, 1911.

Plaintiff further alleges that during all the times mentioned herein said office and station was one continuously operated night and day, and that said em-

ployee, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[15]

FOR A FIFTH CAUSE OF ACTION

plaintiff alleges that said defendant is and was during all the times mentioned herein a corporation and a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, during the twenty-four-hour period beginning at the hour of 1:20 o'clock A. M., on January 18, 1911, at its office and station at Otis, in the State of California, and within the jurisdiction of this court, required and permitted its certain telegraph operator and employee, to wit, O. H. Perry, to be and remain on duty for a longer period than nine hours in said twenty-four hour period, to wit, from said hour of 1:20 o'clock, A. M., on January 18, 1911, to the hour of 2:00 o'clock P. M. on said date.

Plaintiff further alleges that during all the times

mentioned herein said office and station was one continuously operated night and day, and that said employee, while required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, dispatched, reported, transmitted, received and delivered orders pertaining to and affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars. [16]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of two thousand five hundred dollars and its costs herein expended.

A. I. McCORMICK,
United States Attorney.

[Endorsed]: No. 106 Civil. In the District Court of the United States, for the Sou. Dist. of California. United States of America, Plaintiff, vs. San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant. Complaint. Filed Sep. 15, 1911, at 2 min. past 12 o'clock P. M. E. H. Owen, Clerk.
———, Deputy. [17]

[Summons in Case No. 106.]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Action brought in the said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City of Los Angeles, County of Los Angeles.

The President of the United States of America, Greeting: To San Pedro, Los Angeles & Salt Lake Railroad Company, a Corporation.

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the District Court of the United States, in and for the Southern District of California, and to file your plea, answer or demurrer, to the complaint filed therein (a certified copy of which accompanies this summons), in the office of the Clerk of said Court, in the City of Los Angeles, County of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you.

The said action is brought to recover of defendant the sum of two Thousand Five Hundred (\$2500.00)

Dollars and costs expended, alleged to be due for violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page [18] 1415). Reference is hereby had to the complaint on file herein for particulars (a copy of which is hereunto attached), said complaint containing five causes of action, and praying for judgment of \$500.00 upon each and every of said cause of action, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded in the complaint.

WITNESS, the Honorable OLIN WELLBORN, Judge of the District Court of the United States, in and for the Southern District of California, this 15th day of September, in the year of our Lord one thousand nine hundred and eleven, and of our Independence the one hundred and thirty-sixth.

[Seal]

E. H. OWEN,
Clerk.

By C. E. Scott,
Deputy Clerk.

United States Marshal's Office,
Southern District of California.

I HEREBY CERTIFY, that I received the within writ on the 20th day of September, 1911, and personally served the same on the 21st day of September, 1911, by delivering to and leaving with Mr. R. E. Wells, Gen. Mgr. San Pedro, Los Angeles & Salt

Lake R. R. Co., said defendant named therein, personally, at the County of Los Angeles, in said District, a certified copy thereof, together with a copy of the Complaint, certified to by E. H. Owen, attached thereto.

Los Angeles, Sept. 21, 1911.

LEO V. YOUNGWORTH,

U. S. Marshal.

By E. Dingle,

Deputy. [19]

[Endorsed]: Marshal's Civil Docket No. 1778. No. 106 Civil. U. S. District Court, Southern District of California, Southern Division. United States of America vs. San Pedro, Los Angeles & Salt Lake Railroad Co. Original Summons. A. I. McCormick, Plaintiff's Attorney. Filed Sep. 22, 1911, at 10 min. past 10 o'clock A. M. E. H. Owen, Clerk. C. E. Scott, Deputy. [20]

*In the District Court of the United States, for the
Southern District of California, Southern
Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Answer [in Case No. 106].

Comes now the defendant in the above-entitled ac-

tion, and for answer to the complaint filed herein, avers:

FIRST CAUSE OF ACTION.

For answer to the first cause of action, defendant avers that an emergency existed which made it necessary for this defendant to require the said J. N. Grande mentioned in said first cause of action to be and remain on duty during all of the times and at the place mentioned in said first cause of action, in order to preserve the lives of passengers upon the trains of this defendant, and to avoid collisions and the destruction of life and property; and defendant avers that the employment of said J. N. Grandee during the hours aforesaid was unavoidable and such as is permitted by section 2 of the Act referred to in said complaint.

SECOND CAUSE OF ACTION.

For answer to the second cause of action, defendant avers that an emergency existed which made it necessary for this defendant to require the said W. T. Dugan mentioned in said second cause of action to be and remain on duty during all of the times and at the place mentioned in said second cause of action, in order to preserve the lives of passengers upon the trains of this defendant, and to avoid collisions and the destruction of life and property; and defendant avers that the employment of said W. T. Dugan during the hours aforesaid was unavoidable and such as is permitted by section [21] 2 of the Act referred to in said complaint.

THIRD CAUSE OF ACTION.

For answer to the third cause of action, defendant

avers that an emergency existed which made it necessary for this defendant to require the said W. T. Dugan mentioned in said third cause of action to be and remain on duty during all of the times and at the place mentioned in said third cause of action, in order to preserve the lives of passengers upon the trains of this defendant, and to avoid collisions and the destruction of life and property; and defendant avers that the employment of said W. T. Dugan during the hours aforesaid was unavoidable and such as is permitted by section 2 of the Act referred to in said complaint.

FOURTH CAUSE OF ACTION.

For answer to the fourth cause of action, defendant avers that an emergency existed which made it necessary for this defendant to require the said J. B. Foster mentioned in said fourth cause of action to be and remain on duty during all of the times and at the place mentioned in said fourth cause of action, in order to preserve the lives of passengers upon the trains of this defendant and to avoid collisions and the destruction of life and property; and defendant avers that the employment of said J. B. Foster during the hours aforesaid was unavoidable and such as is permitted by section 2 of the Act referred to in said complaint.

FIFTH CAUSE OF ACTION.

For answer to the fifth cause of action, defendant avers that an emergency existed which made it necessary for this defendant to require the said O. H. Perry mentioned in said fifth cause of action to be and remain on duty during all of the times and at the

place mentioned in said fifth cause of action in order to preserve the lives of passengers upon the trains of this defendant and to avoid collisions and the destruction of life and property; and defendant avers that the employment of said O. H. Perry during the hours aforesaid was unavoidable and such as is permitted by section [22] 2 of the Act referred to in said complaint.

WHEREFORE, defendant says that it has not in aught violated or transgressed any of the provisions of the Act aforesaid, and it asks to be discharged herefrom without cost, and for all other relief proper in the premises.

A. S. HALSTED,
W. F. PALMER,
Attorneys for Defendant.

State of California,
County of Los Angeles,—ss.

W. H. Comstock, being first duly sworn, deposes and says: That he is the Secretary of San Pedro, Los Angeles & Salt Lake Railroad Company, the defendant in the above-entitled action; that he has heard read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters he believes it to be true.

W. H. COMSTOCK.

Subscribed and sworn to before me, this 4th day of October, 1911.

[Seal]

AMELIA GUEST,
Notary Public.

[Endorsed]: No. 106 Civil. U. S. District Court, Southern District of California. United States of America, Plaintiff, vs. San Pedro, Los Angeles, & Salt Lake Railroad Co., Defendant. Answer. Filed October 4, 1911 E. H. Owen, Clerk. By C. E. Scott, Deputy Clerk. Received copy of the within answer this 4 day of Oct., 1911. A. I. McCormick, U. S. Atty. By G. E. C., Asst. Solicitor for Plaintiff, 502-4 Pacific Electric Bldg., Los Angeles, Cal. A. S. Halsted & W. F. Palmer, Solicitors for Defendant. [23]

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Demurrer to Answer [in Case No. 106].

Comes now the plaintiff, United States of America, and demurs to the answer of the defendant in the above-entitled action on the following grounds, to wit:

I.

DEMURRER TO ANSWER TO FIRST CAUSE
OF ACTION.

Plaintiff demurs to defendant's answer to the

first cause of action on the following grounds:

A. That said answer to said first cause of action does not, nor does any part thereof, state facts sufficient to constitute a defense to plaintiff's said first cause of action.

B. That said answer is *uncertain* in this, that it cannot be ascertained therefrom what the facts are from which defendant draws its conclusion "that an emergency existed which made it necessary for this defendant to require the said J. N. Grandee * * * to be and remain on duty" at the times charged in plaintiff's complaint; or what the facts are from which the defendant concludes that the detention of the said employee in service, as alleged, was "unavoidable" and such as is permitted by the Act.
[24]

C. That said answer to said first cause of action is *unintelligible* for the same reasons for which it is herein alleged to be uncertain.

II.

DEMURRER TO ANSWER TO SECOND CAUSE OF ACTION.

Plaintiff demurs to defendant's answer to the second cause of action on the following grounds:

A. That said answer to said second cause of action does not, nor does any part thereof, state facts sufficient to constitute a defense to plaintiff's said second cause of action.

B. That said answer is uncertain in this, that it cannot be ascertained therefrom what the facts are from which defendant draws its conclusion "that an emergency existed which made it necessary for this

defendant to require the said W. T. Dugan * * * to be and remain on duty" at the times charged in plaintiff's complaint; or what the facts are from which the defendant concludes that the detention of the said employee in service, as alleged, was "unavoidable" and such as is permitted by the Act.

C. That said answer to said second cause of action is *unintelligible* for the same reasons for which it is herein alleged to be uncertain.

III.

DEMURRER TO ANSWER TO THIRD CAUSE OF ACTION.

Plaintiff demurs to defendant's answer to the third cause of action on the following grounds:

A. That said answer to said third cause of action does not, nor does any part thereof, state facts sufficient to constitute a defense to plaintiff's said third cause of action. [25]

B. That said answer is uncertain in this, that it cannot be ascertained therefrom what the facts are from which defendant draws its conclusion "that an emergency existed which made it necessary for this defendant to require the said W. T. Dugan * * * to be and remain on duty" at the times charged in plaintiff's complaint; or what the facts are from which the defendant concludes that the detention of the said employee in service, as alleged, was "unavoidable" and such as is permitted by the Act.

C. That said answer to said third cause of action is *unintelligible* for the same reasons for which it is herein alleged to be uncertain.

IV.

DEMURRER TO ANSWER TO FOURTH
CAUSE OF ACTION.

Plaintiff demurs to defendant's answer to the fourth cause of action on the following grounds:

A. That said answer to said fourth cause of action does not, nor does any part thereof, state facts sufficient to constitute a defense to plaintiff's said fourth cause of action.

B. That said answer is uncertain in this, that it cannot be ascertained therefrom what the facts are from which defendant draws its conclusion "that an emergency existed which made it necessary for this defendant to require the said J. B. Foster * * * to be and remain on duty" at the times charged in plaintiff's complaint; or what the facts are from which the defendant concludes that the detention of the said employees in service, as alleged, was "unavoidable" and such as is permitted by the Act. [26]

C. That said answer to said fourth cause of action is *unintelligible* for the same reasons for which it is herein alleged to be uncertain.

V.

DEMURRER TO ANSWER TO FIFTH CAUSE
OF ACTION.

Plaintiff demurs to defendant's answer to the fifth cause of action on the following grounds:

A. That said answer to said fifth cause of action does not, nor does any part thereof, state facts sufficient to constitute a defense to plaintiff's said fifth cause of action.

B. That said answer is uncertain in this, that it cannot be ascertained therefrom what the facts are from which defendant draws its conclusion "that an emergency existed which made it necessary for this defendant to require the said O. H. Perry * * * to be and remain on duty" at the times charged in plaintiff's complaint; or what the facts are from which the defendant concludes that the detention of the said employee in service, as alleged, was "unavoidable" and such as is permitted by the Act.

C. That said answer to said fifth cause of action is *unintelligible* for the same reasons for which it is herein alleged to be uncertain.

WHEREFORE plaintiff prays that its demurrer to said answer to said several counts be sustained and that plaintiff have judgment against defendant as prayed.

A. I. McCORMICK,
United States Attorney,
GEO. E. CRYER,
Asst. United States Attorney,
Attorneys for Plaintiff.

[Endorsed]: No. 106 Civil. In the District Court of the United [27] States for the Sou. Dist. of California, Southern Division. United States of America, Plaintiff, vs. San Pedro, Los Angeles and Salt Lake Railroad Company, Defendant. Demurrer to Answer. Filed Oct. 11, 1911. E. H. Owen, Clerk. By C. E. Scott, Deputy. Copy received Oct. 11, 1911. A. S. Halsted, W. F. Palmer, Attys. for Defendant. [28]

**[Order in Case No. 106 Sustaining Demurrer to
Answer, etc.]**

At a stated term, to wit, the July Term, A. D. 1912,
of the District Court of the United States of
America in and for the Southern District of Cal-
ifornia, Southern Division, held at the court-
room thereof, in the city of Los Angeles, on Mon-
day, the eighth day of July, in the year of our
Lord one thousand nine hundred and twelve.
Present: The Honorable OLIN WELLBORN,
District Judge.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILWAY COMPANY,
Defendant.

This cause coming on at this time to be further
heard on plaintiff's demurrer to defendant's answer:
Dudley W. Robinson, Esq., Assistant U. S. Attorney,
appearing as counsel for the United States; W. F.
Palmer, Esq., appearing as counsel for defendant;
and said cause having been further argued, on be-
half of the United States, by Dudley W. Robinson,
Esq., of counsel for the United States; and having
also been further argued on behalf of the defendant
by W. F. Palmer, Esq., of counsel for defendant,
and having been further argued on behalf of the
United States in reply by Dudley W. Robinson, Esq.,
Assistant U. S. Attorney, of counsel for the United
States; and said cause having been submitted to the

Court for its consideration and decision; it is now by the Court ordered that said demurrer of plaintiffs to the answer of the defendant be, and the same hereby is sustained, with leave to said defendant to amend its answer within thirty (30) days, if it shall be so advised; whereupon defendant requests leave to carry the demurrer to defendant's answer back and sustain the same to the complaint herein, which request is by [29] the Court denied; and it is ordered that defendant be and he hereby is granted ten (10) days within which to prepare and serve a bill of exceptions.

[Endorsed]: No. 106 Civil. United States District Court, Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant. Copy of Minute Order. Filed October 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [30]

ORIGINAL.

*In the District Court of the United States, for the
Southern District of California, Southern
Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

Amended Answer [in Case No. 106].

Comes now the defendant in the above-entitled action, and for its Amended Answer to the complaint filed herein says:

FIRST CAUSE OF ACTION.

For amended answer to the first cause of action this defendant avers that at the time alleged in said paragraph of the complaint, the force of telegraphers employed at Kelso consisted of an Agent operator, whose hours were from 8 o'clock A. M. to 4 o'clock P. M., and two telegraph operators, whose hours were from 4 o'clock P. M. to 12 o'clock midnight, and from 12 o'clock midnight to 8 o'clock A. M. respectively; that on January 16th, 1911, one W. F. Starkey was one of the telegraph operators so employed by defendant at said station, and his regular hours were from 4 o'clock P. M. to 12 o'clock midnight; that on said 16th day of January, 1911, the said Starkey was taken suddenly ill and incapacitating him from service as a telegraph operator; that said Kelso station is a helper terminal and an important telegraph station, and an office which it is necessary to keep in operation continuously during the entire 24 hours of each day; that at the time said Starkey was taken ill there was no available telegraph operator at Kelso to replace him, and it was necessary for this defendant to procure another operator and send him to said station, and that as soon as possible this defendant did procure an operator, V. G. Ham, and send him to Kelso for service to

take the place of said Starkey, and the said Ham began his term of service as soon as possible, to wit, January 20th, 1911. [31]

Wherefore, this defendant says that by reason of the aforesaid facts, an emergency arose and existed which required and made it necessary and imperative for this defendant to require the said J. N. Grandee to work overtime as alleged in the complaint.

SECOND CAUSE OF ACTION.

And for its amended answer to the second cause of action mentioned in said complaint, this defendant re-avers each and every allegation contained in its answer to the first cause of action, and further says that by reason of said facts an emergency arose and existed which required and made it necessary and imperative for this defendant to require the said W. T. Dugan to work overtime as alleged in the complaint.

THIRD CAUSE OF ACTION.

And for its amended answer to the third cause of action mentioned in said complaint, this defendant re-avers each and every allegation contained in its answer to the first cause of action, and further says that by reason of said facts an emergency arose and existed which required and made it necessary and imperative for this defendant to require the said W. T. Dugan to work overtime as alleged in the complaint.

FOURTH CAUSE OF ACTION.

And for its amended answer to the fourth cause of action mentioned in said complaint, this defend-

ant avers that Otis is a freight division terminal upon its said line of railroad, and it is necessary to and this defendant does, keep in its employ three telegraph operators, whose regularly assigned hours are from 6 o'clock A. M. to 2 o'clock P. M.; from 2 o'clock P. M. to 10 o'clock P. M., and from 10 o'clock P. M. to 6 o'clock A. M. respectively; that on January 18th, 1911, the defendant had employed as its [32] telegraphing force at said Otis station, W. Casey, O. H. Perry and J. B. Foster; that on said January 18th, 1911, the said Casey, whose hours were from 10 o'clock P. M. to 6 o'clock A. M., appeared at defendant's telegraph office for duty in a state of helpless intoxication and could not safely handle train orders or transact any other business over the wires, and this defendant performed its duty by refusing to permit said Casey to go to work, and immediately proceeded to find a successor to said Casey; that no extra operator could be found at Otis to take the place of said Casey, and the said O. H. Perry and said J. B. Foster were required and did work overtime to supply the place of said Casey; that as soon as possible thereafter, to wit, January 19th, 1911, this defendant procured the services of one W. H. Williams and caused him to report at said telegraph office at Otis and take the place of said Casey, and that the said Williams did take the place of said Casey at as early a date as practicable.

Wherefore, this defendant says that by reason of the aforesaid facts, an emergency arose and existed which required and made it necessary and imperative for this defendant to require the said O. H.

Perry and said J. B. Foster to work overtime as alleged in said complaint.

FIFTH CAUSE OF ACTION.

And for its amended answer to the fifth cause of action mentioned in said complaint, this defendant re-avers all of the allegations contained in its amended answer to the fourth cause of action above, and further says that by reason of the facts aforesaid, an emergency arose and existed which required and made it necessary and imperative for this defendant to require the said O. H. Perry and said J. B. Foster to work overtime as alleged in said complaint.

WHEREFORE, this defendant says that it has not in aught [33] violated or transgressed any of the provisions of the Act mentioned in the complaint, and asks to be discharged herefrom without cost, and for all other relief proper in the premises.

A. S. HALSTED,

W. F. PALMER,

Attorneys for Defendant.

State of California,

County of Los Angeles,—ss.

W. H. Comstock, being first duly sworn, deposes and says, that he is the Secretary of San Pedro, Los Angeles & Salt Lake Railroad Company, defendant in the above-entitled action; that he has heard read the foregoing Amended Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as

to those matters he believes it to be true.

W. H. COMSTOCK.

Subscribed and sworn to before me, this 7th day of August, 1912.

[Seal]

FRANCIS J. MIEDING,
Notary Public.

[Endorsed]: No. 106 Civil. U. S. District Court, Ninth Circuit, Southern District of California. The United States of America, Plaintiff, vs. S. P. L. A. & S. L. R. R. Co., Defendant. Amended Answer. Filed Aug. 7, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Received copy of the within answer this 7 day of Aug., 1912. A. I. McCormick. By Regan. Solicitor for ———. A. S. Halsted, W. F. Palmer, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitors for Defendant.
[34]

[Complaint in Case No. 243.]

In the District Court of the United States, for the Southern District of California, ——— Division.

1838.

No. —.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Now comes the United States of America, by Aloysius I. McCormick, United States Attorney for the Southern District of California, and brings this action on behalf of the United States against the San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation organized and doing business under the laws of the State of Utah, and having an office and place of business at Los Angeles, in the State of California; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission. [35]

FOR A FIRST CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 12:30 o'clock P. M. on October 1, 1912, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Crestmore, in said State, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, C. A. Cochrane, to be and remain on duty as such for a longer period than sixteen con-

secutive hours, to wit, from said hour of 12:30 o'clock P. M., on said date, to the hour of 10:40 o'clock A. M., on October 2, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra east and west drawn by its own locomotive engine No. 3639, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[36]

FOR A SECOND CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 12:30 o'clock P. M. on October 1, 1912, upon its line of railroad at and between the stations of Los Angeles, in the State of California, and Crestmore, in said State, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, A. B. Kleir, to be and remain on duty as such for a longer period than sixteen consecutive

hours, to wit, from said hour of 12:30 o'clock P. M. on said date to the hour of 10:40 o'clock A. M. on October 2, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra east and west drawn by its own locomotive engine No. 3639, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[37]

FOR A THIRD CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock P. M. on October 3, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this Court required and permitted its certain conductor and employee, to wit, G. D. Brown, to be and remain on duty as such for a longer period than six-

teen consecutive hours, to wit, from said hour of 5:00 o'clock P. M., on said date, to the hour of 8:00 o'clock P. M. on October 4, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 1 drawn by its own locomotive engine No. 3434, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress said defendant is liable to plaintiff in the sum of five hundred dollars. [38]

FOR A FOURTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock P. M. on October 3, 1912, upon its line of railroad at and between the stations of Las Vegas in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit, R. A. Edwards, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00

o'clock P. M., on said date, to the hour of 8:00 o'clock P. M., on October 4, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 1 drawn by its own locomotive engine No. 3434, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress said defendant is liable to plaintiff in the sum of five hundred dollars. [39]

FOR A FIFTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock P. M. on October 3, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit, H. F. Berringer, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock P. M. on said date, to the hour of 8:00

o'clock P. M. on October 4, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 1 drawn by its own locomotive engine No. 3434, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[40]

FOR A SIXTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M., on October 4, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this court, required and permitted its certain conductor and employee, to wit, J. P. Fitzpatrick, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:30 o'clock A. M. on said date to the hour of

6:25 o'clock A. M. on October 5, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 7 drawn by its own locomotive engine No. 3433, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[41]

FOR A SEVENTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M. on October 4, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit, J. S. Roberts, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:30 o'clock A. M. on said date, to the hour of 6:25 o'clock

A. M. on October 5, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 7 drawn by its own locomotive engine No. 3433, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[42]

FOR AN EIGHTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:30 o'clock A. M. on October 4, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Los Angeles, in the State of California, within the jurisdiction of this court, required and permitted its certain brakeman and employee, to wit, C. A. Carter, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:30 o'clock A. M. on said date to the hour of 6:25 o'clock

A. M. on October 5, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train number 7 drawn by its own locomotive engine No. 3433, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[43]

FOR A NINTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 2:30 o'clock P. M. on October 7, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Pomona, in said State, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, Charles W. Madden, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 2:30 o'clock

P. M. on said date to the hour of 2:40 o'clock P. M. on October 8, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its locomotive engine No. 3617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[44]

FOR A TENTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 2:30 o'clock P. M. on October 7, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Pomona, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, Joe Glynn, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 2:30 o'clock P. M.

on said date to the hour of 2:40 o'clock P. M. on October 8, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its locomotive engine No. 3617, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[45]

FOR AN ELEVENTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock P. M. on October 8, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Scott, in the State of California, within the jurisdiction of this court, required and permitted its certain engineer and employee, to wit, H. P. Mitchell to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock

P. M. on said date to the hour of 10:30 o'clock A. M. on October 9, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3669, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[46]

FOR A TWELFTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock P. M. on October 8, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Scott, in the State of California, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, C. S. Caskey, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00

o'clock P. M. on said date to the hour of 10:30 o'clock A. M. on October 9, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3669, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[47]

FOR A THIRTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 8:45 o'clock P. M. on October 13, 1912, upon its line of railroad at and between the stations of Otis, in the State of California, and San Bernardino, in said State, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, O. A. Weeks, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 8:45

o'clock P. M. on said date to the hour of 3:55 o'clock P. M. on October 14, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train 81 and extra west drawn by its own locomotive engine No. 3666, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[48]

FOR A FOURTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 8:45 P. M. on October 13, 1912, upon its line of railroad at and between the stations of Otis, in the State of California, and San Bernardino, in said State, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, Jess All, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 8:45 o'clock P. M.

on said date to the hour of 3:55 o'clock P. M. on October 14, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train 81 and extra west drawn by its own locomotive engine No. 3666, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[49]

FOR A FIFTEENTH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 4:15 o'clock P. M. on October 16, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Los Angeles, in said State, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, J. G. Allison, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of

4:15 o'clock P. M. on said date to the hour of 9:45 o'clock A. M. on October 17, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3629, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[50]

FOR A SIXTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 4:15 o'clock P. M. on October 16, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Los Angeles, in said State, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, F. Thompson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 4:15

o'clock P. M. on said date to the hour of 9:45 o'clock A. M. on October 17, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west, drawn by its own locomotive engine No. 3629, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[51]

FOR A SEVENTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at at the hour of 6:15 o'clock P. M on October 18, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Otis, in the State of California, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, Joel V. Noblitt, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of

6:15 o'clock P. M. on said date to the hour of 11:40 o'clock A. M. on October 19, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3666, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[52]

FOR AN EIGHTEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 6:15 o'clock P. M. on October 18, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Otis, in the State of California, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, H. O. Johnson, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 6:15 o'clock

P. M. on said date to the hour of 11:40 o'clock A. M. on October 19, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3666, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[53]

FOR A NINETEENTH CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on October 27, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Otis, in the State of California, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, J. C. Frazier, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00 o'clock

A. M. on said date to the hour of 11:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3668, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[54]

FOR A TWENTIETH CAUSE OF ACTION

plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 5:00 o'clock A. M. on October 27, 1912, upon its line of railroad at and between the stations of Las Vegas, in the State of Nevada, and Otis, in the State of California, within the jurisdiction of this Court, required and permitted its certain fireman and employee, to wit, L. Cruncleston, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 5:00

o'clock A. M. on said date to the hour of 11:00 o'clock P. M. on said date.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3668, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[55]

FOR A TWENTY-FIRST CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour of 3:40 o'clock P. M. on October 31, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Ontario, in said State, within the jurisdiction of this Court, required and permitted its certain engineer and employee, to wit, Charles W. Madden, to be and remain on duty as such for a longer period than sixteen consecutive hours, to wit, from said hour of 3:40

o'clock P. M. on said date to the hour of 10:00 o'clock A. M. on November 1, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its own locomotive engine No. 3627, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.

[56]

FOR A TWENTY-SECOND CAUSE OF ACTION plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress, known as "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907 (contained in 34 Statutes at Large, page 1415), said defendant, beginning at the hour 3:40 o'clock P. M. on October 31, 1912, upon its line of railroad at and between the stations of San Bernardino, in the State of California, and Ontario, in said State, within the jurisdiction of this court, required and permitted its certain fireman and employee, to wit, Joe Glynn, to be and remain on duty as such for a longer period than sixteen con-

secutive hours, to wit, from said hour of 3:40 o'clock P. M. on said date to the hour of 10:00 o'clock A. M. on November 1, 1912.

Plaintiff further alleges that said employee, while required and permitted to be and remain on duty as aforesaid, was engaged in and connected with the movement of said defendant's train extra west drawn by its locomotive engine No. 3627, said train being then and there engaged in the movement of interstate traffic.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of five hundred dollars.
[57]

WHEREFORE, plaintiff prays judgment against said defendant in the sum of eleven thousand dollars and its costs herein expended.

A. I. McCORMICK,

United States Attorney.

HARRY R. ARCHBALD,

Asst. U. S. Attorney.

[Endorsed]: No. 243 Civil. In the District Court of the United States, for the Sou. Dist. of California, Southern Division. United States of America, Plaintiff, vs. San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant. Complaint. Filed Mar. 7, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [58]

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

No. 243—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, a Corporation,
Defendant.

Answer [in Case No. 243].

Comes now the defendant, and for its answer to
the complaint of the plaintiff on file herein, says:

I.

That answering the first cause of action therein,
it denies that beginning at the hour of 12:30 o'clock
P. M., on October 1st, 1912, upon its line of railroad,
at or between the stations of Los Angeles, California,
and Crestmore, California, and within the jurisdic-
tion of this court, or at any other place, it required or
permitted its engineer, C. A. Cochrane, to be or re-
main on duty as such, or at all, for a longer period
than 16 consecutive hours.

Denies that the said Cochrane was so on duty from
said hour of 12:30 o'clock P. M., on October 1st, 1912,
until the hour of 10:40 o'clock A. M., on October 2d,
1912, or longer than until the hour of 4:30 o'clock
A. M., of said October 2d, 1912.

Denies that said engineer, C. A. Cochrane, was re-
quired or permitted to be or remain on duty as set

out in said first cause of action, or was engaged in or connected with the movement of defendant's train extra east and west, or any other train, drawn by its own locomotive engine No. 3639, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said first cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.
[59]

II.

That answering the second cause of action therein, it denies that beginning at the hour of 12:30 P. M., on October 1st, 1912, upon its line of railroad, at or between the stations of Los Angeles, California, and Crestmore, California, and within the jurisdiction of this court, or at any other place, it required or permitted its fireman, A. B. Kleir, to be or remain on duty as such, or at all, for a longer period than 16 consecutive hours;

Denies that said Kleir was so on duty from said hour of 12:30 o'clock P. M., on October 1st, 1912, until the hour of 10:40 o'clock A. M., on October 2d, 1912, or longer than until the hour of 4:30 o'clock A. M., of said October 2d, 1912.

Denies that said fireman, A. B. Kleir, was required or permitted to be or remain on duty as set out in said second cause of action, or was engaged in or connected with the movement of defendants train extra east and west, or any other train, drawn by its own locomotive engine No. 3639, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said second cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

III.

That answering the third cause of action therein, it denies that beginning at the hour of 5:00 P. M., on October 3d, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its conductor, G. D. Brown, to be or remain on duty as such, or at all, for a longer period than 16 consecutive hours.

Denies that said conductor, G. D. Brown, was required or permitted to be or remain on duty as set out in said third cause of action, or was engaged in or connected with the movement of defendant's [60] train No. 1, or any other train, drawn by its own locomotive engine No. 3434, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said third cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

IV.

That answering the fourth cause of action therein, it denies that beginning at the hour of 5:00 o'clock P. M., on October 3d, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its brakeman, R. A. Edwards, to be or remain on duty as such, or at all, for a longer period than 16 consecutive hours.

Denies that said brakeman, R. A. Edwards, was required or permitted to be or remain on duty as set out in said fourth cause of action, or was engaged in or connected with the movement of defendant's train No. 1, or any other train, drawn by its own locomotive engine No. 3434, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said fourth cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

V.

That answering the fifth cause of action therein, it denies that beginning at the hour of 5:00 o'clock P. M., on October 3d, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its brakeman, H. E. Berringer, to be or remain on duty as such, or at all, for a longer period than 16 consecutive hours.

Denies that said brakeman, H. E. Berringer, was required or [61] permitted to be or remain on duty as set out in said fifth cause of action, or was engaged in or connected with the movement of defendant's train No. 1, or any other train, drawn by its own locomotive engine No. 3434, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said fifth cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

VI.

That answering the sixth cause of action therein, it denies that beginning at the hour of 5:30 o'clock A. M., on October 4th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its conductor, J. P. Fitzpatrick, to be or remain on duty as such, or at all, for a longer period than 16 consecutive hours.

Denies that said conductor, J. P. Fitzpatrick, was required or permitted to be or remain on duty as set out in said sixth cause of action, or was engaged in or connected with the movement of defendant's train No. 7, or any other train, drawn by its own locomotive engine No. 3433, the said train being then and there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said sixth cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

VII.

That answering the 7th cause of action herein, it denies that beginning with the hour of 5:30 o'clock A. M., on October 4th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its brakeman, J. S. Roberts, to be or remain on duty, as such [62] or at all, for a longer period than 16 consecutive hours.

Denies that said brakeman, J. S. Roberts, was required or permitted to be or remain on duty as set

out in said 7th cause of action, or was engaged in or connected with the movement of defendant's train No. 7, or any other train, drawn by its own locomotive engine No. 3433, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 7th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

VIII.

That answering the 8th cause of action therein, it denies that beginning at the hour of 5:50 o'clock A. M., on October 4th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its brakeman, C. A. Carter, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said brakeman, C. A. Carter, was required or permitted to remain or be on duty as set out in said 8th cause of action, or was engaged in or connected with the movement of defendant's train No. 7, or any other train, drawn by its own locomotive engine No. 3433, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 8th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

IX.

That answering the 9th cause of action therein, it denies that beginning at the hour of 2:30 P. M., on October 7th, 1912, upon its line of railroad, at or be-

tween the stations of San Bernardino, California, and Pomona, California, and within the jurisdiction [63] of this court, or at any other place, it required or permitted its engineer, Charles W. Madden, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said Madden was so on duty from said hour of 2:30 o'clock P. M., on October 7th, 1912, until the hour of 2:40 o'clock P. M., on October 8th, 1912, or longer than until the hour of 6:15 o'clock A. M., on said October 8th, 1912.

Denies that said engineer, Charles W. Madden, was required or permitted to be or remain on duty as set out in said 9th cause of action, or was engaged in or connected with the movement of defendant's train extra west, or any other train, drawn by its own locomotive engine No. 3617, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 9th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

X.

That answering the tenth cause of action therein, it denies that beginning at the hour of 2:30 o'clock P. M., on October 7th, 1912, upon its line of railroad, at or between the stations of San Bernardino, California, and Pomona, California, and within the jurisdiction of this court, or at any other place, it required or permitted its fireman, Joe Glynn, to be or remain on duty, as such or at all, for a period longer than 16 consecutive hours.

Denies that said Glynn was so on duty from said hour of 2:30 o'clock P. M., on October 7th, 1912, until the hour of 2:40 o'clock P. M., on October 8th, 1912, or longer than until the hour of 6:15 A. M., on said October 8th, 1912.

Denies that said fireman, Joe Glynn, was required or permitted to be or remain on duty as set out in said tenth cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive [64] engine No. 3617, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said tenth cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XI.

That answering the 11th cause of action therein, it denies that beginning at the hour of 5:00 o'clock P. M. on October 8th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Scott, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, H. P. Mitchell, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that the said Mitchell was so on duty from said hour of 5:00 o'clock P. M. on October 8th, 1912, until the hour of 10:30 o'clock A. M. on October 9th, 1912, or longer than until the hour of 8:55 o'clock A. M. on said October 9th, 1912.

Denies that said engineer, H. P. Mitchell, was required or permitted to be or remain on duty as set

out in said 11th cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3669, the said train being then and there engaged in the movement of the interstate traffic.

Denies that by reason of any facts alleged in said 11th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XII.

That answering the 12th cause of action therein, it denies that beginning at the hour of 5:00 o'clock P. M. on October 8th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Scott, California, and within the jurisdiction of this court, or at any other place, it required or permitted its [65] fireman, C. E. Caskey, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said Caskey was so on duty from said hour of 5:00 o'clock P. M. on October 8th, 1912, until the hour of 10:30 o'clock A. M. on October 9th, 1912, or longer than until the hour of 8:55 o'clock A. M. on said October 9th, 1912.

Denies that said fireman, C. E. Caskey, was required or permitted to be or remain on duty as set out in said 12th cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3669, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said

12th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XIII.

That answering the 13th cause of action therein, it denies that beginning at the hour of 8:45 o'clock P. M. on October 13th, 1912, upon its line of railroad, at or between the stations of Otis, California, and San Bernardino, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, O. A. Weeks, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said Weeks was so on duty from said hour of 8:45 o'clock P. M. on October 13th, 1912, until the hour of 3:55 o'clock P. M. on October 14th, 1912, or longer than until the hour of 12:35 o'clock P. M., on said October 14th, 1912.

Denies that said engineer, O. A. Weeks, was required or permitted to be or remain on duty as set out in said 13th cause of action, or was engaged in or connected with the movement of defendant's train 81 and extra west, or any other train, drawn by its own locomotive engine No. 3666, the said train being then or [66] there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 13th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XIV.

That answering the 14th cause of action therein, it denies that beginning at the hour of 8:45 o'clock P. M. on October 13th, 1912, upon its line of railroad, at

or between the stations of Otis, California, and San Bernardino, California, and within the jurisdiction of this court, or at any other place, it required or permitted its fireman, Jesse All, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said All was so on duty from said hour of 8:45 o'clock P. M. on October 13th, 1912, until the hour of 3:55 o'clock P. M. on October 14th, 1912, or longer than until the hour of 12:35 o'clock P. M. on said October 14th, 1912.

Denies that said fireman, Jesse All, was required or permitted to be or remain on duty as set out in said 14th cause of action, or was engaged in or connected with the movement of defendant's train 81 and extra west, or any other train, drawn by its own locomotive engine No. 3666, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 14th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XV.

That answering the 15th cause of action therein, it denies that beginning at the hour of 4:15 o'clock P. M. on October 16th, 1912, upon its line of railroad, at or between the stations of San Bernardino, California, and Los Angeles, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, J. G. Allison, to be or remain on duty, as [67] such, or at all, for a longer period than 16 consecutive hours.

Denies that said Allison was so on duty from said

hour of 4:15 o'clock P. M. on October 16th, 1912, until the hour of 9:45 o'clock A. M. on October 17th, 1912, or longer than until the hour of 8:15 o'clock A. M. on said October 17th, 1912.

Denies that said J. G. Allison was required or permitted to be or remain on duty as set out in said fifteenth cause of action, or was engaged in or connected with the movement of defendant's train extra west, or any other train, drawn by its own locomotive engine No. 3629, the said train being then and there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 15th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00 or any other sum.

XVI.

That answering the 16th cause of action therein, it denies that beginning at the hour of 4:15 o'clock P. M. on October 16th, 1912, upon its line of railroad, at or between the stations of San Bernardino, California, and Los Angeles, California, and within the jurisdiction of this court, or any other place, it required or permitted its fireman, F. Thompson, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said Thompson was so on duty from said hour of 4:15 o'clock P. M. on October 16th, 1912, until the hour of 9:45 o'clock A. M. on October 17th, 1912, or longer than until the hour of 8:15 o'clock A. M. on said October 17th, 1912.

Denies that said fireman, F. Thompson, was required or permitted to be or remain on duty as set out in said 16th cause of action, or was engaged in

or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3629, the said train being then or there engaged in the movement of interstate traffic. [68]

Denies that by reason of any facts alleged in said 16th cause of action, the defendant is liable to the plaintiff in the sum of \$50.00 or any other sum.

XVII.

That answering the 17th cause of action therein, it denies that beginning at the hour of 6:15 o'clock P. M. on October 18th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Otis, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, Joel V. Noblitt, to be or remain on duty, as such, or at all, for a longer period than sixteen consecutive hours.

Denies that said Noblitt was so on duty from said hour of 6:15 o'clock P. M. on October 18th, 1912, until the hour of 11:40 o'clock A. M. on October 19th, 1912, or longer than until the hour of 10:10 o'clock A. M. on said October 19th, 1912.

Denies that said engineer, Joel V. Noblitt, was required or permitted to be or remain on duty as set out in said 17th cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3666, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said

17th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XVIII.

Answering the 18th cause of action in said complaint, it denies that beginning at the hour of 6:15 o'clock P. M. on October 18th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Otis, California, and within the jurisdiction of this court, or at any other place, it required or permitted its fireman, H. O. Johnson, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours. [69]

Denies that the said Johnson was so on duty from said hour of 6:15 o'clock P. M. on October 18th, 1912, until the hour of 11:40 o'clock A. M. on October 19th, 1912, or longer than until the hour of 10:10 o'clock A. M., on said October 19th, 1912.

Denies that said fireman, H. O. Johnson, was required or permitted to be or remain on duty as set out in said 18th cause of action, or was engaged in or connected with the movement of the defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3666, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 18th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XIX.

Answering the 19th cause of action of said complaint, it denies that beginning at the hour of 5:00 o'clock A. M. on October 27th, 1912, upon its line of

railroad, at or between the stations of Las Vegas, Nevada, and Otis, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, J. C. Frazier, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that the said Frazier was so on duty from said hour of 5:00 o'clock A. M. on October 27th, 1912, until the hour of 11:00 o'clock P. M. of said date, or longer than until the hour of 8:55 o'clock P. M. on said October 27th, 1912.

Denies that said engineer, J. C. Frazier, was required or permitted to be or remain on duty as set out in said 19th cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3668, the said train being then and there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 19th cause [70] of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XX.

Answering the 20th cause of action of said complaint, it denies that beginning at the hour of 5:00 o'clock A. M. on October 27th, 1912, upon its line of railroad, at or between the stations of Las Vegas, Nevada, and Otis, California, and within the jurisdiction of this court, or at any other place, it required or permitted its fireman, L. Cruncleston, to be or remain on duty as such or at all, for a longer period

than 16 consecutive hours.

Denies that said Crunclestone was so on duty from said hour of 5:00 o'clock A. M. on October 27th, 1912, until the hour of 11:00 o'clock P. M. of said date, or longer than until the hour of 8:55 o'clock P. M. on said October 27th, 1912.

Denies that said fireman, L. Crunclestone, was required or permitted to be or remain on duty as set out in said 20th cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3668, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 20th cause of action, the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

XXI.

Answering the 21st cause of action of said complaint, it denies that beginning at the hour of 3:40 o'clock P. M. on October 31st, 1912, upon its line of railroad, at or between the stations of San Bernardino, California, and Ontario, California, and within the jurisdiction of this court, or at any other place, it required or permitted its engineer, Charles W. Madden, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.
[71]

Denies that the said Madden was so on duty from said hour of 3:40 o'clock P. M. on October 31st, 1912, until the hour of 10:00 o'clock A. M. on November

1st, 1912, or longer than until the hour of 7:40 o'clock A. M. on said November 1st, 1912.

Denies that said engineer, Charles W. Madden, was required or permitted to be or remain on duty as set out in said 21st cause of action, or was engaged in or connected with the movement of defendant's train, extra west, or any other train, drawn by its own locomotive engine No. 3627, the said train being then or there engaged in the movement of interstate traffic.

Denies that by reason of any facts alleged in said 21st cause of action, the defendant is liable to the plaintiff in the sum of \$500.00 or any other sum.

XXII.

That answering the 22d cause of action of said complaint, it denies that beginning at the hour of 3:40 o'clock P. M. on October 31st, 1912, upon its line of railroad, at or between the stations of San Bernardino, California, and Ontario, California, and within the jurisdiction of this court, or any other place, it required or permitted its fireman, Joe Glynn, to be or remain on duty, as such, or at all, for a longer period than 16 consecutive hours.

Denies that said Glynn was so on duty from said hour of 3:40 o'clock P. M. on October 31st, 1912, until the hour of 10:00 o'clock A. M. on November 1st, 1912, or longer than until the hour of 7:40 o'clock A. M. on said November 1st, 1912.

Denies that said fireman, Joe Glynn, was required or permitted to be or remain on duty as set out in said 22d cause of action, or was engaged in or connected with the movement of defendant's train,

extra west, or any other train, drawn by its own locomotive engine No. 3627, the said train being then or there engaged in the movement of interstate traffic.
[72]

Denies that by reason of any facts alleged in said 22d cause of action; the defendant is liable to the plaintiff in the sum of \$500.00, or any other sum.

WHEREFORE, the defendant having answered fully, demands judgment that the plaintiff take nothing by its said action, or causes of action, and that defendant recover its costs herein.

PENNEL CHERRINGTON,
Attorney for Defendant.

State of California,
County of Los Angeles,—ss.

W. H. Comstock, being first duly sworn, deposes and says that he is an officer of said defendant corporation, to wit, the Secretary thereof; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated upon his information and belief, and as to those matters he believes it to be true.

W. H. COMSTOCK.

Subscribed and sworn to before me, this 14th day of April, 1913.

[Seal]

FRANCIS J. MIEDING.

Notary Public.

Service of the foregoing answer is hereby ad-

mitted, and a copy thereof received, this 14th day of April, 1913.

HARRY R. ARCHBALD,
M. E. Y.,
Attorneys for Plaintiff.

[Endorsed]: No. 243 Civil. U. S. District Court, Ninth District, Southern District of California. The United States of America, Plaintiff, vs. S. P. L. A. & S. L. R. R. Co., a Corporation, Defendant. Answer. Filed Apr. 14, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pen-nel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [73]

[Order Consolidating Cases Nos. 106 and 243.]

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court-room thereof, in the city of Los Angeles, on Monday, the 6th day of October, in the year of our Lord one thousand nine hundred and thirteen. Present: The Honorable OLIN WELL-BORN, District Judge.

No. 243—Civil S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, a Corporation,
Defendant.

Harry R. Archbald, Esq., Assistant U. S. Attorney, and Monroe C. List, Esq., Special Assistant U. S. Attorney, appearing as counsel for the United States; Pennel Cherrington, Esq., and F. R. McNamee, Esq., appearing as counsel for defendant; now, after the commencement of the trial in case No. 106 Civil, Southern Division, between the same parties, it is, on motion of Monroe C. List, Esq., Special Assistant U. S. Attorney, and with the consent of Pennel Cherrington, Esq., of counsel for defendant, ordered that this cause be, and the same hereby is consolidated with said cause No. 106 Civil S. D., and it is further ordered that the trial of said cause as consolidated proceed.

[Endorsed]: No. 243 Civil. United States District Court, Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant. Copy Minute Order. Filed October 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [74]

[Verdict.]

In the District Court of the United States for Southern District of California, Southern Division.

Nos. 106 and 243—Civil, Consolidated.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, a Corporation,
Defendant.

We, the jury in the above-entitled cause, under the instructions of the Court, find for the plaintiff in the 1st, 2d, and 3d causes of action alleged in Complaint in case No. 106 Civil, and each and every of the twenty-two causes of action alleged in Complaint in case No. 243 Civil, and for the defendant in the 4th cause of action alleged in Complaint in case No. 106 Civil.

Los Angeles, Cal., October 8th, 1913.

ISAAC B. NEWTON,
Foreman.

[Endorsed]: 106-243 Civil, Consolidated. U. S. District Court, Southern Dist. of Calif., Southern Division. United States vs. San Pedro, Los Angeles & Salt Lake Railroad Co. Verdict. Filed October 8, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [75]

[Judgment.]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

Nos. 106 and 243—Civil, Consolidated.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

This cause having come on regularly for trial on the 6th day of October, 1913, being a day in the July Term, A. D. 1913, of the District Court of the United States for the Southern District of California, Southern Division, before the court and a jury of twelve (12) men duly impanelled; Harry R. Archbald, Esq., Assistant U. S. Attorney, and Monroe C. List, Esq., Special Assistant U. S. Attorney, appearing as counsel for the plaintiffs, and Pennel Cherrington, Esq., appearing as counsel for the defendant; and the fifth cause of action in case No. 106 Civil, having been, on said 6th day of October, dismissed; and the trial having been proceeded with on the 6th, 7th and 8th days of October, 1903, and witnesses having been sworn and examined, and documentary evidence having been introduced, and the evidence having been closed, and the cause after argument by counsel for the respective parties, and the instructions of the Court, having, on the said 8th day of October, 1913, been submitted to the jury, and the jury on the 8th day of October, 1913, having rendered the following verdict:

“In the District Court of the United States for Southern District of California, Southern Division.

Nos. 106 and 243, Civil, Consolidated.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY, a Corporation,
Defendant. [76]

We, the jury in the above-entitled cause, under the instructions of the Court, find for the plaintiff in the 1st, 2d and 3d causes of action alleged in Complaint in case No. 106 Civil, and each and every of the twenty-two causes of action alleged in Complaint in case No. 243 Civil, and for the defendant in the 4th cause of action alleged in Complaint in case No. 106 Civil.

Los Angeles, Cal., October 8th, 1913.

ISAAC B. NEWTON.

Foreman.”

—and the Court having pronounced judgment as follows, to wit: That the defendant pay a penalty of one hundred (100) dollars on each of the following causes of action in case No. 243 Civil, S. D., to wit: Causes of action numbers 1, 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22; that the defendant pay a penalty of one hundred and fifty (150) dollars on each of the following causes of action in case No. 243 Civil S. D., to wit: Causes of action

numbers 3, 4, 5, 6, 7, and 8; that the defendant pay a penalty of one hundred and fifty (150) dollars on each of the following causes of action in case No. 106 Civil S. D., to wit: Causes of action numbers 1, 2 and 3; and that defendant pay the costs in case No. 106 Civil, S. D., in case No. 243 Civil, S. D., and in the consolidated case Nos. 106 and 243 Civil, S. D.—

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that the United States of America, plaintiffs herein, have and recover of and from the San Pedro, Los Angeles & Salt Lake Railroad Company, defendant herein, the sum of Two Thousand Nine Hundred and Fifty Dollars (\$2,950.00), together with said plaintiffs' costs and disbursements in this behalf taxed at \$71.20.

Judgment entered October 10th, 1913.

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk. [77]

[Endorsed]: No. 106 and 243, Civil, Consolidated. United States District Court, Southern District of California, Southern Division. The United States of America, Plaintiffs, vs. San Pedro, Los Angeles & Salt Lake Railroad Company, Defendant. Copy of Judgment. Filed October 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. [78]

[Certificate to Judgment and Judgment-roll.]

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

Nos. 106 and 243—Civil, Consolidated.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing to be a true copy of the Judgment entered in the above-entitled action, and recorded in Judgment Book 2 of said Court for the Southern Division, at page 227 thereof, and I further certify that the foregoing papers hereto annexed, constitute the Judgment-roll in said action.

ATTEST my hand and the seal of said District Court, this 10th day of October, A. D. 1913.

[Seal]

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk.

[Endorsed]: No. 106-243 Civil, Consolidated. In the District Court of the United States for the Southern District of California, Southern Division. The United States of America, vs. San Pedro, Los

Angeles & Salt Lake Railroad Co. Judgment-roll. Filed October 10, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Recorded Judg. Register Book No. 2, page 227. [79]

[Order Denying Motion for New Trial.]

At a stated term, to wit, the July Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the twenty-ninth day of December, in the year of our Lord, one thousand nine hundred and thirteen. Present: The Honorable OLIN WELLBORN, District Judge.

Nos. 106 and 243—Civil, Consolidated.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES AND SALT LAKE
RAILROAD COMPANY,

Defendant.

This cause coming on this day to be heard on defendant's motion for a new trial; Harry R. Archbald, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; Pennel Cherrington, Esq., appearing as counsel for defendant; and this cause having been submitted to the Court for its consideration and decision, without argument, on said motion, it is now ordered that defendant's mo-

tion for a new trial be, and the same hereby is denied. [80]

*In the United States District Court in and for the
Southern District of California, Southern Division.*

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

v.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Bill of Exceptions.

The above consolidated causes coming on regularly for trial, on October 6th, 1913, before the Honorable Olin Wellborn, Judge of the above-named court, and a jury duly empaneled and sworn, Messrs. Albert Schoonover, Harry R. Archbald and Monroe C. List, appearing for plaintiff, and Pennel Cherrington appearing for defendant, the following proceedings were had and testimony taken:

Stipulation [of Facts].

The following stipulation of facts was then read in evidence, (omitting title of court and causes):

Now come the plaintiff and defendant in the above-numbered and styled cause, by their respective attorneys, and in order to facilitate the trial of the same, enter into the following agreement:

The defendant may be permitted to make any affirmative defense under the plea filed by it in this cause, without the necessity of filing an amended answer. [81]

The following facts, which are agreed to be true in all particulars, may be admitted and read as evidence at the trial thereof:

1. The defendant is a corporation organized and doing business under the laws of the State of Utah and having an office and place of business at Los Angeles, Cal. It is, and was during the times mentioned in plaintiff's petition, a common carrier engaged in interstate commerce by railroad in the State of California,

Counts 1-2.

2. The defendant, on October 1 and 2, 1912, operated on its line of railroad from its station at Los Angeles, Cal., to Crestmore, Cal., and return, its certain freight train, known as Extra East and West, drawn by defendant's locomotive engine No. 3639, being the train mentioned in the 1st and 2d counts of plaintiff's petition, said train being at all times engaged in the movement of interstate traffic.

3. The defendant required and permitted its certain employees, to wit, locomotive engineer C. A. Cochrane and locomotive fireman A. B. Kleir, being the employees mentioned in the 1st and 2d counts, respectively, of said petition, to be and remain on duty as such and engaged in and connected with the movement of said train as follows:

4. Said train was scheduled to leave Los Angeles at 1:00 P. M., October 1, 1912. In compliance with defendant's rules and regulations, said employees reported for and went on duty at 12:30 P. M. on said date, at which time they began the work of looking after their engine and putting it in proper condition for road service, which character of service they performed until 1:34 P. M. on said date, at which time said train left Los Angeles.

5. For the purposes of this stipulation, the character of service above described will hereafter be designated as preparatory service.

6. From 1:34 P. M., on said date, until 4:30, the following morning, said employees were engaged in the work of operating said [82] engine in the movement of said train from Los Angeles to Crestmore, and thence back to Rowlands, Cal., at which last named place and time said train was tied up by defendant on account of the Federal 16 hour law, and the crew, with the exception of said engineer and fireman, relieved from duty and from all responsibility as to said train.

7. For the purpose of this stipulation, the character of service last described will hereafter be designated as road service.

8. From Rowlands said train, including engine 3639, was hauled to Los Angeles by another of defendant's engines, arriving there at 10:40 A. M., October 2, 1912, at which time and place said engineer and fireman were released from all service of whatsoever nature and from all responsibility for the performance of any kind of service.

9. Between Rowlands and Los Angeles said employees were not required to nor did they operate said engine for the purpose of hauling said train between those stations; nor were they charged with the present responsibility for the operation of said engine for the purpose of hauling said train should the occasion arise. They did not handle train orders during this period. Said employees, however, were required to remain on duty on their engine while it was being hauled in said train from Rowlands to Los Angeles, for the purpose of watching same, seeing that the fire was kept up, that the water did not get too low in the boiler, and that a certain amount of steam pressure was always maintained.

10. For the purposes of this stipulation, the character of service last described will hereafter be designated as watchman's service.

11. The continuous service, therefore, required of said employees in connection with said train on the above dates was 22 hours and 10 minutes, being divided or classified as follows: [83] 1 hour and 4 minutes preparatory service, 14 hours and 56 minutes road service, and 6 hours and 10 minutes watchmen's service.

Counts 9-10.

12. The defendant, on October 7 and 8, 1912, operated on its line of railroad from its station at San Bernardino, Cal., to Los Angeles, its certain freight train, known as extra west, drawn by defendant's locomotive engine No. 3617, being the train mentioned in the 9th and 10th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

13. The defendant required and permitted its certain employees, to wit, locomotive engineer Chas. W. Madden and locomotive fireman Joe Glynn, being the employees mentioned in the 9th and 10th counts respectively, of said petition, to be and remain on duty from 2:30 P. M., October 7th, 1912, to 2:40 P. M., October 8, 1912, which period of 24 hours and 10 minutes of continuous service was in connection with said train, and was divided or classified as follows:

40 minutes preparatory service at San Bernardino.
15 hours and 20 minutes road service between San Bernardino and Pomona, Cal., where said train was tied up by defendant on account of the Federal 16 hour law, and

8 hours and 10 minutes service as watchman on said engine while said train was being hauled from Pomona to Los Angeles by another of defendant's engines.

Counts 11-12.

14. The defendant, on October 8 and 9, 1912, operated on its line of railroad from its station at Las Vegas, Nev., to Scott, Cal., its certain freight train,

known as extra west, drawn by defendant's locomotive engine No. 3617, being the train mentioned in the 11th and 12th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

15. The defendant required and permitted its certain employees, to wit, locomotive engineer H. P. Mitchell and locomotive fireman, C. E. Caskey, being the employees mentioned in the 11th and [84] 12th counts, respectively, of said petition, to be and remain on duty from 5:00 P. M., October 8, 1912, to 10:30 A. M., October 9, 1912, which period of 17 hours and 30 minutes of continuous service was in connection with said train, and was divided or classified as follows:

40 minutes preparatory service at Las Vegas.

15 hours and 15 minutes road service between Las Vegas and Scott, where said train was tied up by defendant on account of the Federal 16 hour law, and

1 hour and 35 minutes service as watchman on said engine while waiting at Scott for relief crew.

Counts 13-14.

16. The defendant, on October 13 and 14, 1912, operated on its line of railroad from its station at Otis, Cal., to San Bernardino, its certain freight train, known as No. 81 and extra west, drawn by defendant's locomotive engine No. 3666, being the train mentioned in the 13th and 14th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

17. The defendant required and permitted its

certain employees, to wit, Locomotive engineer O. A. Weeks and locomotive fireman Jess All, being the employees mentioned in the 13th and 14th counts, respectively, of said petition, to be and remain on duty from 8:45 P. M., October 13, 1912, to 3:55 P. M., October 14, 1912, which period of 19 hours and 10 minutes of continuous service was in connection with said train, and was divided or classified as follows:

6 hours and 50 minutes preparatory service, including delays at Otis to change engines, make repairs to same, and make up train;

8 hours and 55 minutes road service between Otis and Summitt, Cal., where said train was tied up by defendant on account of the Federal 16 hour law, and,

3 hours and 25 minutes service as watchman on said engine while [85] said train was being hauled to San Bernardino by another of defendant's engines.

Counts 15-16.

18. The defendant, on October 16 and 17, 1912, operated on its line of railroad from its station at San Bernardino to Pomona, its certain freight train, known as extra west, drawn by defendant's locomotive engine No. 3629, being the train mentioned in the 15th and 16th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

19. The defendant required and permitted its certain employees, to wit, locomotive engineer J. G. Allison and locomotive fireman F. Thompson, being the employees mentioned in the 15th and 16th

counts, respectively of said petition, to be and remain on duty from 4:15 P. M., October 16, 1912, to 9:45 A. M. October 17, 1912, which period of 17 hours and 30 minutes of continuous service was in connection with said train, and was divided or classified as follows:

1 hour preparatory service at San Bernardino,
15 hours' road service between San Bernardino and Pomona, where said train was tied up by defendant on account of the Federal 16 hour law, and

1 hour and 30 minutes service as watchman on said engine while waiting at Pomona for relief crew.

Counts 17-18.

20. The defendant, on October 18 and 19, 1912, operated on its line of railroad from its station at Las Vegas to Otis, its certain freight train, known as extra west, drawn by defendant's locomotive engine No. 3666, being the train mentioned in the 17th and 18th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

21. The defendant required and permitted its certain employees, to wit, locomotive engineer Joel V. Noblitt, and locomotive fireman H. O. Johnson, being the employees mentioned in the 17th and 18th counts, respectively, of said petition, to be and remain on [86] duty from 6:15 P. M., October 18, 1912, to 11:40 A. M., October 19, 1912, which period of 17 hours and 25 minutes of continuous service was in connection with said train, and was divided or classified as follows:

40 minutes preparatory service at Las Vegas,

15 hours and 15 minutes road service between Las Vegas and Harvard, Cal., where said train was tied up by defendant on account of the Federal 16 hour law, and

1 hour and 30 minutes service as watchman on said engine while said train was being hauled from Harvard to Otis by another of defendant's engines.

Counts 19-20.

22. The defendant, on October 27, 1912, operated on its line of railroad from its station at Las Vegas to Otis, its certain freight train, known as extra west, drawn by defendant's locomotive engine No. 3668, being the train mentioned in the 19th and 20th counts of said petition, said train being at all times engaged in the movement of interstate traffic.

23. The defendant required and permitted its certain employees, to wit, locomotive engineer J. C. Frazier and locomotive fireman L. Cruncleston, being the employees mentioned in the 19th and 20th counts, respectively of said petition, to be and remain on duty from 5:00 A. M., October 27, 1912, to 11:00 P. M., on said date, which period of 18 hours of continuous service was in connection with said train, and was divided or classified as follows:

1 hour and 15 minutes preparatory service at Las Vegas,

14 hours and 40 minutes road service between Las Vegas and Harvard, where said train was tied up by defendant on account of the Federal 16 hour law, and

2 hours and 5 minutes service as watchman on said engine while said train was being hauled from Harvard to Otis by another of defendant's engines.

Counts 21-22.

24. The defendant, on October 31, 1912, and November 1, 1912, [87] operated on its line of railroad from its station at San Bernardino, to Ontario, Cal., its certain freight train, known as extra west, drawn by defendant's locomotive engine No. 3627, being the train mentioned in the 21st and 22d counts of said petition, said train being at all times engaged in the movement of interstate traffic.

25. The defendant required and permitted its certain employees, to wit, locomotive engineer Chas. W. Madden and locomotive fireman Joe Glynn, being the employees mentioned in the 21st and 22d counts, respectively, of said petition, to be and remain on duty from 3:40 P. M., October 31, 1912, to 10:00 A. M., November 1, 1912, which period of 18 hours and 20 minutes of continuous service was in connection with said train, and was divided or classified as follows:

30 minutes preparatory service at San Bernardino,
15 hours and 30 minutes road service between San Bernardino and Ontario, where said train was tied up on account of the Federal 16-hour law, and,

2 hours and 20 minutes service as watchman on said engine while waiting at Ontario for relief crew.

[Testimony of Carl P. Smith, for Plaintiff.]

CARL P. SMITH, a witness called on behalf of plaintiff, being first duly sworn, testified as follows:

I am Chief Clerk of the Superintendent of the defendant railroad company. It is in my office that the records of the movement of trains are kept.

Train No. 1 referred to in the 3d, 4th, and 5th causes of action, in case No. 243, left Las Vegas, Nevada, on October 3d, 1912. It came from Salt Lake City, but on this Division it started at Las Vegas with its crew. The destination of the train was Los Angeles; it was a passenger train, and its conductor was G. D. Brown and the brakemen were R. A. Edwards and H. E. Henderson. On the 3d of October, 1912, they reported for duty at 5:00 P. M., the train leaving at 5:42 P. M. In the meantime they were engaged in preparatory work, going over their train, making inspection of the equipment, etc. These employees brought the train through to Los Angeles, and during all of the trip were connected with its movement. They reached Los Angeles at 8:00 P. M. October 4th, at which time they were released, having been in continuous service 27 hours. The train was not operated over our railroad the entire distance; under normal conditions the train would have gone from Las Vegas to Daggett over the Salt Lake road (the Sale Lake road, wherever mentioned, refers to the defendant), from Daggett to Colton over the line of the Santa Fe, from Colton to Riverside Junction over the Southern Pacific, and from there in over the Salt Lake road. We have a

(Testimony of Carl P. Smith.)

joint track contract with both the Santa Fe and Southern Pacific. The train in question came over our tracks from Las Vegas to Crucero, California. On account of land slides, this train was detoured to Ludlow over the Tonopah & Tidewater, and thence over the Santa Fe to Daggett, and from Daggett over the usual route. Las Vegas is 334 miles from Los Angeles. From Las Vegas to Crucero it is 129.9 miles; from Crucero to [89] Daggett it is 41.1 miles, and from Daggett to Los Angeles it is 158.6 miles. In detouring that day the train went approximately 28 extra miles; it is a little over 25 miles from Crucero to Ludlow, and 44.2 miles from Ludlow to Daggett. The train ran on its schedule from Las Vegas to Crucero, but from there on to Daggett probably as an extra, as it was not regularly scheduled over the Tonopah & Tidewater or the Santa Fe lines between the points mentioned. From Daggett on to Los Angeles, it was No. 1. The employees mentioned were in continuous service from the time they left Las Vegas until they arrived at Los Angeles. They were under our control from Las Vegas to Crucero, and then again after they left Riverside Junction.

The first division point west of Las Vegas is Otis, about 4 miles east of Daggett. That is a freight terminal and not a passenger terminal, though the freight crews at Otis were qualified as passenger crews. The train was delayed ten minutes at Daggett while a fresh engine crew was sent down from Otis to relieve the engineer and fireman, but there was

(Testimony of Carl P. Smith.)

no conductor or brakeman sent. There was no effort made to send down a conductor or brakeman from Otis. We had no crews available at Otis, that is, freight crews, when the train passed Daggett. There was no effort made at San Bernardino to release the conductor and brakemen. San Bernardino, for overland passenger trains, is not a terminal, though it is a freight terminal. It is also a passenger terminal for local passenger crews running between San Bernardino and Los Angeles. Those trains go to San Bernardino over the line of the Southern Pacific after leaving Riverside Junction. There was no effort made at San Bernardino to release the crew of No. 1, though it could have been done by sending a crew from Los Angeles. The crew could have been relieved at any point by sending out a crew from Los Angeles, provided we had means to get them there.

This train reached Crucero at 11:55 P. M. on October 3d; and [90] Ludlow at 6:15 A. M. October 4th, left Ludlow at 9:45 A. M. reached Daggett at 11:45 A. M. October 4th, leaving there at 11:55 A. M., and reached San Bernardino at 4:35 P. M. on October 4th.

Crucero, Ludlow and Daggett were telegraph stations, handled train orders, and were open when this train passed those points. This train was under the direction of the Chief Dispatcher at Los Angeles, but he would not know when the train arrived at or departed from Ludlow because of trouble with the telegraph wires as a result of weather conditions. He knew, however, when the train reached Daggett, and

(Testimony of Carl P. Smith.)

when it reached Daggett, he knew that it would be impossible to get to Los Angeles within the sixteen-hour period from the time it left Las Vegas. But notwithstanding that there was no effort made to send a crew from Otis to relieve it at San Bernardino, or to send a relief crew from Los Angeles.

Train No. 7, referred to in the 6th, 7th and 8th causes of action in case No. 243, was a limited passenger train, which left Las Vegas, Nevada, at 6:12 A. M., on October 4th. J. P. Fitzpatrick was the conductor, and J. S. Roberts and C. A. Carter were the brakemen. They went on duty at 5:30 A. M. October 4th, and from then until 6:12 they were engaged in preparatory work, as in the case of the crew of the other train. They brought the train into Los Angeles from Las Vegas, reaching Los Angeles at 6:28 A. M., October 5th, 1912, when they were relieved, having been in continuous service 24 hours and 55 minutes, during all of which time they were connected with the movement of the train. This train made the same detour as did train No. 1. It reached Daggett at 2:50 P. M. Oct. 4th. It left there at 3:35 P. M., and reached San Bernardino at 3:34 A. M., October 5th, after the 16-hour period had already expired.

I can't state what telegraph offices were open between Daggett and San Bernardino when that train passed, because though [91] they are joint offices, I have not their records and don't know their hours of service. There was no effort made to relieve the crew of this train at San Bernardino, though it could

(Testimony of Carl P. Smith.)

have been done by sending a crew from Los Angeles. Had there been freight crews available, the passenger crew could have been relieved with them as they were qualified for passenger service. Neither in the case of train No. 1, on October 3d and 4th, nor train No. 7, on October 4th and 5th, was any effort made to send relief crews from Los Angeles. The scheduled running time of No. 1 for October 3d and 4th, between Las Vegas and Los Angeles, was 13 hours and 30 minutes, and for No. 7, it was 11 hours and 28 minutes.

I am familiar with the stipulation concerning counts 1 and 2 and counts 9 to 22, inclusive. The purpose of keeping up a certain amount of steam on these engines was for convenience in lubricating.

When No. 1 left Las Vegas on the night of October 3d, it was not known that it would have to detour at Crucero. The train was delayed 1 hour and 30 minutes between Las Vegas and Crucero, by having to stop to pick up section and bridge men to repair the land slide which occurred between Crucero and Otis—to help clear the line for traffic. When the train left Las Vegas it was not known that it would have to pick up these men; it was not known until the train reached Jean, about 40 miles from Las Vegas. The land slide was on the main line between Crucero and Otis. Otis was a freight terminal; that is, a point at which freight train crews are relieved. There is a difference between a passenger train crew terminal and an engine crew terminal. A passenger train crew consists of a conductor and two brakemen,

(Testimony of Carl P. Smith.)

and an engine crew consists of an engineer and a fireman. Otis was not a terminal for passenger train crews, but was a terminal for passenger engine crews. San Bernardino was not a passenger train crew terminal for through service. [92]

When No. 1 got to Daggett, where it changed its engine crew instead of at Otis, as was usual, there were no freight crews available at Otis. They had been put in work train service and had gone to the land slide to help clear the line. When these two trains got to San Bernardino, there were no freight crews there; they had been sent out prior to the arrival of the train, in freight service. San Bernardino was not a passenger train crew terminal for through trains, but there were two local passenger train crews, which laid over there each night; they had only one brakeman each. The through trains ran from San Bernardino to Colton over the Santa Fe, but the two local crews ran from San Bernardino to Riverside Junction over the Southern Pacific, a different system of road and different road-bed from the Santa Fe. These local crews laying over at San Bernardino may have been familiar with the Santa Fe rules, but so far as I know, they never operated trains over the Santa Fe road.

Going back to train No. 1, leaving Las Vegas October 3d, this train was delayed at Crucero 55 minutes waiting for orders and the completion of arrangements to detour over the Tonopah & Tidewater road. This delay was not known when the train left Las Vegas. It was next delayed 2 hours and 10 minutes

(Testimony of Carl P. Smith.)

at Crucero by reason of finding a bridge washed out on the line of the Tonopah & Tidewater and having to return to Crucero until repairs could be made. This washout was not known of when the train left Las Vegas, nor when it left Crucero. This delay was 2 hours and 10 minutes. The train was delayed 1 hour and 35 minutes between Crucero and Ludlow on account of slow orders, due to light rails with which the Tonopah & Tidewater line was laid, and soft track as the result of rains. When that train left Las Vegas, we knew that that line was laid with light rail, but knew nothing of the other causes. We were always held down to about 15 miles an hour when detouring on the Tonopah & Tidewater, and we knew that when the train left Las [93] Vegas; that was the regular thing on account of the weight of our engines. When the train left Las Vegas we didn't know we had to detour; we did know, however, when No. 7 left Las Vegas, that it would have to detour. Before this we had frequently detoured passenger trains by way of Crucero and Ludlow. Ordinarily trains so detoured get to Los Angeles within the 16-hour period, barring unusual conditions, such as obtained in these cases.

Q. Now, then, going back, after Number 1 left Crucero, how much delay did you say there was between there and Ludlow?

A. 1 hour and 35 minutes.

Q. Now, did that include the fifteen-hour running time and shorter running time in some places because of weakened track?

(Testimony of Carl P. Smith.)

A. No, when I spoke of slow orders, I meant at points at which they held the train down in some places as low as 4 miles an hour by reason of the conditions which obtained.

That road (the Tonopah and Tidewater) had heavy rains the same as occurred on our line. We didn't know of or suspect these delays when the trains left Las Vegas. After the train left Las Vegas, heavy rains in the hills, severe electrical storms, and storm water running strongly in waterways, developed that were unknown of when the train left Las Vegas, and were unforeseen.

No. 1 was delayed at Ludlow 3 hours and 30 minutes, because the main line of the Santa Fe between Ludlow and Daggett was blocked by the derailment of a Santa Fe train, which necessitated that much delay. No. 1 got to Daggett at 11:45 A. M., about 17 hours and 5 minutes after leaving Las Vegas. It was already over the 16-hour period when it got to Daggett. I have no record of any delay between Daggett and Los Angeles.

No. 7 left Las Vegas on October 4th, at 6:12 A. M. and got to Daggett at 2:50 P. M., having detoured from Crucero. When it got to Daggett, it had been away from Las Vegas 8 hours and 38 minutes. The schedule running time of No. 7 from Daggett to Los Angeles is [94] 5 hours and 35 minutes, so that, had there been no delay encountered after No. 7 left Daggett, it would have gotten to Los Angeles within the 16-hour period. It was delayed, however, after leaving Daggett; it was delayed 24 minutes between

(Testimony of Carl P. Smith.)

Barstow and Victorville on account of a heavy wind-storm which retarded it below the running time. It was further delayed at Hesperia 8 hours and 18 minutes by reason of the main line of the Santa Fe joint track being blocked at Lugo by the derailment of a Santa Fe freight train. This could not have been foreseen when the train left Las Vegas, neither could the delay because of the wind. None of the delays I have testified to could have been foreseen when either No. 1 or No. 7 left Las Vegas. The derailment at Lugo was caused by a freight train breaking a car in two when pulling into a siding, that blocked the main line. I cannot give the exact time of the derailment because I haven't the Santa Fe record, but I am correct about the 8 hour and 18 minutes delay. No. 7 was further delayed ten minutes at Lugo where the derailment occurred, by reason of the main line being blocked by the wrecking outfit having in tow these derailed cars so that the train had to run into the siding and back out in order to get by. That delay could not have been foreseen when the train left Las Vegas. This is the last delay of which I have any record. Had it not been for the delays I have testified to, the train running the regular schedule time would have gotten to Los Angeles within the 16-hour period after leaving Las Vegas. The wreck at Lugo was not known of when No. 7 left Daggett and could not have been foreseen.

Neither one of the local passenger crews at San Bernardino would have been sufficient to run a

(Testimony of Carl P. Smith.)

through train; it would have been necessary to take a portion of both crews, and this would have tied up one, or perhaps both, of these local passenger trains until relief crews could have been sent from Los Angeles. It would have taken one local crew and a half to man one through [95] train, which would have laid out both of the local trains, and these trains carried mail.

Referring to No. 1, of October 3d and 4th, before the train left Las Vegas, it was known that there had been heavy rains in the canyon between Otis and Crucero, but the extent of damage was not known. It was at Jean, I think, that the train got orders to pick up section men. This was about 40 miles from Las Vegas. It was known then that there was considerable damage in the canyon. There was 55 minutes delay at Crucero, and then we were delayed 2 hours and ten minutes on account of the washout when the train went back to Crucero. The regular running time of the train was 13 hours and 30 minutes, and there was preparatory service of 30 minutes required of the crew, so that under normal conditions they would have been on duty 14 hours. Then, before getting to Crucero, 1 hour and 30 minutes was lost by picking up section men. We were delayed at Crucero the first time 55 minutes, and the second time 2 hours and ten minutes. The train left Crucero at 12:50 A. M. When the train left Crucero it was known that we could not get the train in and get the men off duty within the 16 hours, and we then knew that the train, when it

(Testimony of Carl P. Smith.)

detoured down to Ludlow, would have to come back on our own line at Daggett a few miles down. Notwithstanding that, there was no effort made to relieve the crew either at Daggett or San Bernardino or by sending out a relief crew from Los Angeles. When train No. 7 of Oct. 4th reached San Bernardino, the same situation existed. It was known that we could not get it in within the 16 hours, and yet no more effort was made to relieve that crew than there had been in the case of the other train.

When I say it would take one local crew and a half to man a through train, I referred to the State law of California which prohibits the movement of trains with more than four passenger cars with less than a conductor and two brakemen; these local [96] trains have less than four cars, and therefore, but one brakeman each. Of course, we knew how many cars were in No. 1 when it left Las Vegas, and it was known when it left Crucero that it could not get in within the 16 hours. I don't think there were any crews at either Otis or San Bernardino that we could rely on to take No. 7 in. The same conditions applied that night as it did next morning; there were no crews available next morning. We had regularly assigned crews at each terminal, and we kept men for emergencies at Las Vegas and Los Angeles, but not at Otis or San Bernardino. So far as I know, at that time the only place from which we could have gotten relief crews was Los Angeles. This applies to No. 1 on the 3d and No. 7 on the 4th.

Land slides and washouts between Daggett and

(Testimony of Carl P. Smith.)

Crucero are frequent. We have had a number of slides, but none which tied up the road previous to that time. We never had a serious one before. The seriousness of this one could not have been appreciated or known when No. 1 left Las Vegas. The bridge that was encountered on the Tonopah & Tidewater was about a quarter of a mile from Crucero, where they went back and waited until it was repaired—they waited at Crucero and didn't go back to Crucero after the bridge was repaired. Crucero was not a terminal of any kind, but simply a crossing of two railroads.

No. 1 left Crucero finally at 3:00 A. M. October 4th, and its running time from Crucero to Los Angeles was 8 hours and 35 minutes, that is, when there was no detouring. When we detour a train we run it part of the way over the line of some other road, and as a matter of practical operation, when you detour a train, you never can tell what delays will be encountered on the line of the other road, because while the train is on the line of the foreign company it is under the jurisdiction of the dispatchers of the foreign line. In the cases of trains Nos. 1 and 7, as a matter of fact, they were laid out while being detoured to give [97] the other line's trains precedence. After trains Nos. 1 and 7 left Crucero until they got to Colton, the dispatchers of the Salt Lake road had no jurisdiction over them. While on the Tonopah & Tidewater road, they were under the jurisdiction of that company's dispatchers, and after they left Ludlow until they reached Colton they were

(Testimony of Carl P. Smith.)

under the jurisdiction of the Santa Fe dispatchers. The Santa Fe dispatcher handling trains from Daggett to Colton is a joint dispatcher when the regular run of the train is handled by a dispatcher. It is not necessarily true that the road over whose line you detour trains gives a right of way to their trains over yours; that depends upon the importance of the train. In case of both these trains, the detour movement was over when they got to Daggett. The Salt Lake road had no joint dispatcher, either with the Tonopah & Tidewater, nor with the Santa Fe between Ludlow and Daggett, but from Daggett to Los Angeles a different condition prevailed, because there it was a joint track.

Referring to Case No. 106, and to the 1st, 2d and 3d causes of action, Kelso is 236 miles east of Los Angeles, and is between Crucero and Las Vegas. That was a continuous day and night office and was such in January, 1911. We had an operator there named J. H. Grandee, and one named W. T. Dugan. Mr. Grandee performed the duties of agent for the company, and also telegraph operator, handling train orders, messages, Western Union messages, express matter, mail. Mr. Dugan was a telegraph operator, using the telegraph line in receiving and transmitting telegraph orders, Mr. Grandee's hours of service at that station, on January 19th, 1911, was from 8:00 A. M. to 8:00 P. M. He worked continuously 12 hours that day. The orders he handled were pertinent to and affected the movement of trains coming from Nevada and also going from Cali-

(Testimony of Carl P. Smith.)

fornia to Nevada; they were regular interstate trains.

Referring to the second and third causes of action, Mr. Dugan on January 19th, 20th and 21st, 1911, was on duty from 8:00 P. M. [98] to 8:00 A. M., he was in service continuously 12 hours. He quit at 8:00 A. M. on the 20th, and went to work again at 8:00 P. M. on the 20th, and worked until 8:00 A. M. on the 21st, during which time he was engaged in handling the telegraph wires and delivering train orders that affected the movement of interstate trains.

Referring to the 4th cause of action, Otis is a continuous day and night office. J. B. Foster was operator there, one of them. His work was the same as that of the operator at Kelso; he was at the telegraph receiving and delivering train orders. On January 18th, 1911, he went on duty at 2:00 P. M. and worked until 4:30 A. M. January 19th, being in continuous service 14 hours and 30 minutes as a telegraph operator. At Kelso there were three operators regularly employed. The two men were kept on overtime because one of the operators, W. F. Starkey became ill on January 16th. At this time the office at Kelso was under the supervision of the chief dispatcher at Las Vegas. When Starkey was taken ill and the chief dispatcher at Las Vegas was apprised of the fact, he wired to Los Angeles on the morning of the 17th, asking for a relief operator. He wired the Superintendent of Telegraph, who employs the telegraph operators. The Superintendent

(Testimony of Carl P. Smith.)

of Telegraph did not secure a man to take Starkey's place at Kelso, and on the evening of the 17th, the dispatcher at Las Vegas borrowed an operator who was employed in the Las Vegas telegraph office, and started him to Kelso that night. This was the first train from Las Vegas to Kelso after it was learned a man could not be gotten from Los Angeles. When the train reached Lyons, a point between Kelso and Las Vegas, it was derailed and turned over, damaging the equipment and blocking the main line, injuring 14 passengers. The operator who was on this train No. 1, was instructed by the Chief Dispatcher to establish a telegraph office at the wreck in order that he could communicate with headquarters and report conditions and progress there, and enable the dispatcher to move the trains [99] around the wreck when the line was clear. In establishing an office on the line at a wreck, this is a practice we follow on all occasions, as it enables us to clear the line much more quickly. This operator established an office at the wreck and remained until relieved on the evening of January 19th, the Chief Dispatcher at Las Vegas having employed a man to relieve him and sent him out on No. 1 to the wreck. The operator who had been working at the wreck, boarded the same train on which the relief men arrived and went to Kelso. In view of the shortage of help, I would say that a substitute operator was sent to Kelso as expeditiously as could have been done to take the place of Starkey. At that time telegraph operators were extremely scarce.

(Testimony of Carl P. Smith.)

The Western Union and Postal Companies were using a great many operators, and the men preferred to work in Los Angeles rather than go to the desert points, such as Kelso and Otis; they are both in the desert. At that time we had difficulty in getting operators to go there.

The reason for keeping operator Foster on duty 14 and a half hours at Otis on that day was this: Otis is a continuous telegraph office and there were three operators during the 24-hour period. On January 17th, one of these operators, Casey by name, went on duty at the usual time, 10 P. M., apparently in good condition. About 1:20 A. M. January 18th, it was discovered that Casey was under the influence of liquor. He was relieved from duty and operator C. H. Perry called to take his place. He worked continuously until 2:00 P. M. January 18th, making a period of service of 12 hours and 40 minutes consecutively. At 2:00 P. M. Perry was relieved by Foster, who remained on duty until 4:30 A. M. January 19th, a period of 14 hours and 30 minutes, or 1 hour and 30 minutes in excess of the time allowed; that is, in excess of the 13 hours allowed in emergency. He was kept on duty because when Casey became intoxicated and the fact was known that he was to be relieved from duty, operator Williams was employed at Daggett to [100] fill the vacancy; that was during the day of January 18th. He had instructions to go to Otis on No. 2, due to arrive at Otis at 2:45 A. M. January 19th. He failed to put in an appearance when the train arrived, and oper-

(Testimony of Carl P. Smith.)

ator Foster, who was then on duty, sent a messenger for operator Perry to go on duty to relieve him. Had Williams arrived on No. 2 and immediately relieved Foster, Foster's hours of service would have been 12 hours and 45 minutes. It was not known before the train got there that Williams would not arrive on it. The arrangements to send him there were made as soon as the discharge of Casey was known. Mr. Williams' statement after his arrival was that he had become suddenly ill prior to the arrival of his train at Daggett, the one he was intending to take. As soon as it was known that Williams would not come on that train, Perry was gotten to the office to relieve Foster as soon as it was practicable. He had to be called from his sleep. The telegraph office at Otis at that time could not have been closed without interfering with the operation of the road, and the same thing was true of Kelso at the time of the alleged violations. This was a helper terminal; that is, a point where they call helper engines to assist both freight and passenger trains up the mountain.

Referring to the case of trains that were towed in, of which I spoke in my testimony, about keeping up steam for purposes of lubrication, that meant that as long as an engine is under steam or not, the lubrication boxes or valves are taken care of automatically, but when the engine becomes cold the lubrication must be done by hand, and it was to save hand labor that the steam was kept up, and for no other purpose.

(Testimony of Carl P. Smith.)

Referring to the detoured trains 1 and 7, they both carried the United States mail. Las Vegas was a terminal from which they started their runs on the occasions in question, and the next terminal for these trains was Los Angeles. That was the condition that prevailed at the time in question. [101]

Running over the regular run, the distance from Las Vegas to Los Angeles is 334 miles. The schedule running time of train No. 1 from Las Vegas to Los Angeles was 13 hours and 30 minutes, and the running time of No. 7 between the same points was 11 hours and 28 minutes. Under normal conditions neither train ever had any difficulty in getting to Los Angeles on time, as provided by the schedule.

The local trains I spoke of, running between Los Angeles and San Bernardino, entered and left San Bernardino on the Southern Pacific track by reason of a joint track agreement with that Company. That road was separate and distinct from the Santa Fe, over which Nos. 1 and 7 arrived at and left San Bernardino. After leaving Las Vegas, the next passenger terminal for trains 1 and 7 was Los Angeles, that is to say, the passenger crews of these trains ran regularly from Las Vegas to Los Angeles, and *vice versa*.

Referring to the first cause of action in case No. 106, on January 19th, 1911, which was Thursday of that week, operator *Grande* worked 12 hours; it is also true that on Monday, the 16th, Tuesday, the 17th, and Wednesday the 18th, Mr. *Grande* was required to work 12 hours each day. It is also true

[(Testimony of Carl P. Smith.)

that Mr. Dugan was required to work from 8:00 P. M. on the 16th of that month, to 8:00 A. M. of the 17th, and he was also required to work that length of time on Monday of that week. It is also true that he was required to work from 8:00 P. M. of the 17th, to 8:00 A. M. of the 18th, a period of 12 hours. It is also true that from 8:00 P. M. of the 18th, to 8:00 A. M. of the 19th, Mr. Dugan was required to work 12 hours. So that he worked on Monday, Tuesday, Wednesday, Thursday and Friday 12 hours each.

On the entire road from Salt Lake City to Los Angeles, there were at that time 71 telegraph offices, and in them there were employed 106 operators. A great many of them were 3-men offices, continuously operated, and others were two-men offices. They [102] were three-men offices where they were continuously operated. At that time we kept no standing list of reserve operators to relieve regular operators. If a man got sick and quit work, we had to trust to finding someone from off the line to take his place, or depend upon employing one for that purpose.

In the case of Mr. Foster at Otis, named in the 4th cause of action, Foster and Perry could have arranged to work 12 hours each for the three days until we could relieve them, but on the day Foster performed this excess service of 1 hour and 30 minutes over the 12 hours, had he known that his relief would not arrive on No. 2, the second operator would have been called at the expiration of the 12 hours. This

(Testimony of Carl P. Smith.)

arrangement would have been made if we had known that operator Williams would not arrive. Williams, who was to come from Daggett, was not employed by the company at Daggett; he was a new man that we picked up. No other effort was made by the Superintendent of Telegraph to see that Williams actually went on the train, other than that he had Williams' assurance that he would go, but to my knowledge there was no effort made to see that he actually did go.

Referring to train No. 7, in case No. 243, I have no record of the hours of service of the operator at Hesperia. I don't think that Lugo, where the wreck occurred, was a day and night office, and I can't state the exact hour when the wreck occurred—I should say about 4 P. M. October 4th,—may be a little bit later, about 5 P. M. I fixed that time from the arrival of No. 7 at Hesperia, which was 5:35 P. M. It left there about 1:53 A. M. the following day. The running time from Hesperia to San Bernardino was 25 minutes. It is a fact that when we knew these trains were going to exceed the 16-hour limit, we could have gotten relief for them by sending men out from Los Angeles.

There was no further or additional testimony introduced at the trial. [103]

Whereupon the Court gave to the jury the following instruction:

[Instruction of the Court to the Jury.]

The COURT.—In the two cases, gentlemen of the jury, of the United States of America against San

Pedro, Los Angeles & Salt Lake Railroad Company—one of them is numbered 106 and the other 243—which, by reason of their consolidation, have been tried together, the facts are agreed upon. There is no controversy but that in all of the cases mentioned in the complaint—both complaints—the employees named in each count were permitted to remain on service for periods longer than those allowed by the statute. In each case the defendant has sought to justify the detention or the allowing of these employees to remain on service. The facts are agreed upon, and hence it is a matter of law for the Court to determine. And upon these agreed facts I shall hold, and do hold, as matter of law, that none of the defenses to any of the causes of action, except the fourth cause of action in complaint number 106, are good. The Court therefore instructs you—and it is your duty to obey the instructions of the Court—to find in favor of the plaintiff on each count of the complaint in each case, except the fourth count or the fourth cause of action in the complaint in case 106, and on that cause of action you will return a verdict in favor of the defendant. Submit the form of verdict to the jury, and let one of your number be selected as foreman and let him sign the verdict.

And the Court gave to the jury no further or other instruction.

And the defendant then and there, while the jury were in the box, excepted separately to such instruction to the jury as directed them to find for the plaintiff in each cause of action stated in the two

cases, except that part of said instruction as directed the jury to find for the defendant. [104]

Exception No. 1.

In the two cases, gentlemen of the jury, of the United States of America against San Pedro, Los Angeles & Salt Lake Railroad Company—one of them is numbered 106 and the other 243—which, by reason of their consolidation, have been tried together, the facts are agreed upon. There is no controversy but that in all of these cases mentioned in the complaint—both complaints—the employees named in each count were permitted to remain on service for periods longer than those allowed by the statute. In each case the defendant has sought to justify the detention or the allowing of these employees to remain on service. The facts are agreed upon, and hence it is a matter of law for the Court to determine. And upon these agreed facts I shall hold, and do hold, as matter of law, that none of these defenses to any of these causes of action, except the fourth cause of action in complaint number 106, is good. The Court therefore instructs you—and it is your duty to obey the instructions of the Court—to find in favor of the plaintiff on each count of the complaint in each case except the fourth count or the fourth cause of action in the complaint in case 106, and on that cause of action you will return a verdict in favor of the defendant. Submit the form of verdict to the jury, and let one of your number be selected as foreman and let him *sich* the verdict.

And the defendant then and there, while the jury were in the box, excepted separately to such instruc-

tion to the jury as directed them to find for the plaintiff in each cause of action stated in the two cases, except that part of said instruction as directed the jury to find for the defendant.

Thereupon the jury returned a verdict in favor of the plaintiff in words and figures as follows:

“In the District Court of the United States, for the Southern District of California, Southern Division.

Nos. 106 and 243, Consolidated.

THE UNITED STATES OF AMERICA,

Plaintiffs,

versus

SAN PEDRO, LOS ANGELES & SALT LAKE
[105] RAILROAD COMPANY, a Corporation,

Defendant.

We, the jury in the above-entitled cause, under the instructions of the Court, find for the plaintiff in the first, second and third cause of action alleged in complaint in case No. 106, Civil, and each and every of the twenty-two causes of action alleged in complaint in case No. 243, Civil, and for the defendant in the fourth cause of action alleged in complaint in case No. 106, Civil.

Los Angeles, California, October 8th, 1913.

ISAAC B. NEWTON,

Foreman.”

The foregoing, containing all the evidence offered at the trial of said causes, and the instructions of the Court to the jury, with the defendant's exception

thereto, and containing all the proceedings on the trial of said causes, to and including the verdict of the jury, is hereby offered as the defendant's proposed Bill of Exceptions.

PENNEL CHERRINGTON,
Attorney for Defendant.

Service of the foregoing Bill of Exceptions accepted, and a copy thereof received this 28th day of February, 1914.

ALBERT SCHOONOVER,
U. S. Attorney,
MONROE C. LIST,
Spec'l Asst. U. S. Attorney,
HARRY R. ARCHBALD,
Asst. U. S. Attorney,
Attorneys for Plaintiff. [106]

[Stipulation for Settlement and Allowance of Bill of Exceptions.]

It is hereby stipulated that the foregoing Bill of Exceptions is a true and correct Bill of Exceptions, and that the same may be settled and allowed by the Court.

Dated this 3d day of March, 1914.

ALBERT SCHOONOVER,
U. S. Attorney,
MONROE C. LIST,
Spec'l. Asst. U. S. Atty.,
HARRY R. ARCHBALD,
Asst. U. S. Atty.,
Attorneys for Plaintiff.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing Bill of Exceptions, containing all of the evidence offered and introduced at the trial of said cause, and the instructions of the Court to the jury, with the defendant's exceptions thereto, and containing all of the proceedings at the trial of said cause, to and including the verdict of the jury, is a true and correct Bill of Exceptions, and is hereby settled and allowed, and ordered to be filed.

Dated this 4th day of March, 1914.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 106, 243, Civil. U. S. District Court, Ninth District, Southern District of California. The United States of America, Plaintiff, vs. San Pedro, Los Angeles & Salt Lake Railroad Co., Defendant. Engrossed Bill of Exceptions. Filed Mar. 4, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [107]

[Defendant's Exhibit—The Hours-of-Service Law.]**INTERSTATE COMMERCE COMMISSION.
THE HOURS-OF-SERVICE LAW AND AD-
MINISTRATIVE RULINGS AND OPIN-
IONS THEREON.**

Printed by Order of the Commission March 25,
1912.

106-243 Civil.

U. S.

vs.

S. P. L. A. & S. L. Rd. Co.

Filed October 7, 1913.

Defendants Exhibit.

Wm. M. Van Dyke, Clerk,

By C. E. Scott,

Deputy Clerk.

Washington,
Government Printing Office,
1912.

[108]

**THE INTERSTATE COMMERCE COMMIS-
SION.**

CHARLES A. PROUTY, of Vermont.

JUDSON C. CLEMENTS, of Georgia.

FRANKLIN K. LANE, of California.

EDGAR E. CLARK, of Iowa.

JAMES S. HARLAN, of Illinois.

CHARLES C. McCHORD, of Kentucky.

BALTHASER H. MEYER, of Wisconsin.

JOHN H. MARBLE, Secretary. **[109]**

THE HOURS-OF-SERVICE LAW.

An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon. (34 Stat. L., ch. 2939, pp. 1415, 1416.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "employees" as used in this act shall be held to mean persons actually engaged in or connected with the movement of any train.

SEC. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this act to require or permit any employee subject to this act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such

employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive [110] hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty: Provided, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or

34174-12

remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period of not exceeding three days in any week: Provided further, The Interstate Commerce Commission may after full hearing in a particular case and for a good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

Sec. 3. That any such common carrier, or any officer or agent thereof, requiring or permitting any

employee to go, be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce [111] Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: Provided, That the provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: Provided further, That the provision of this act shall not apply to the crews of wrecking or relief trains.

Sec. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provision of this act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this act.

Sec. 5. That this act shall take effect and be in force one year after its passage.

Public, No. 274, approved March 4, 1907, 11:50 a. m.

CONFERENCE RULINGS ON THE HOURS-OF-SERVICE LAW BY THE COMMISSION.

April 7, 1908.

56. HOURS-OF-SERVICE LAW—STREET-CAR COMPANIES.—Upon inquiry whether the hours-of-service law applies to electric street-car lines which are interstate carriers: Held, That it applies to all railroads subject to the provisions of the act to regulate commerce, as amended, including street railroads when engaged in interstate commerce. (See Rule 287.)

May 5, 1908.

74. HOURS-OF-SERVICE LAW.—Employees deadheading on passenger trains or on freight trains and not required to perform, and not [112] held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are deadheading, are not while so deadheading “on duty” as that phrase is used in the act regulating the hours of labor. (See Rule 287-b.)

June 25, 1908.

88. HOURS-OF-SERVICE LAW.—(a) The specific proviso of the law in regard to hours of service is:

“That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers

orders pertaining to or affecting train movements, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period *on* not exceeding three days in any week."

These provisions apply to employees in towers, offices, places, and stations, and do not include train employees who, by the terms of the law, are permitted to be or remain on duty sixteen hours consecutively or sixteen hours in the aggregate in any twenty-four-hour period, and who may occasionally use telegraph or telephone instruments for the receipt or transmission of orders affecting the movement of trains. (See Rule 287.)

(b) Section 3 of the law provides that:

"The provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where [113] the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen."

Any employee so delayed may therefore continue on duty to the terminal or end of that run. The proviso quoted removes the application of the law

to that trip. (See Rule 287.)

November 10, 1908.

108. HOURS-OF-SERVICE LAW—FERRY EMPLOYEES.—The hours-of-service law does not apply to employees on a ferry, even though the ferry be owned by a railroad company. The law applies to employees connected with the movement of trains, and hence does not embrace employees engaged only in the operation of a ferry. This ruling does not apply to car ferries. (See Rule 287.)

April 4, 1910.

275. HOURS-OF-SERVICE LAW — TRAIN BAGGAGEMEN.—The provisions of section 1 of the hours-of-service law apply to train baggagemen who are employees of the railway company and who are required by the rules of the company to perform or to hold themselves in readiness, when called upon, to perform any duty connected with the movement of any train. (See Rules 74 and 287.)

March 16, 1908.

287. THE HOURS-OF-SERVICE LAW.—(a) The provisions of this act apply to all common carriers by railroad in the District of Columbia, or in any Territory of the United States, or engaged in the movement of interstate or foreign traffic; and to all employees of such common carriers who are engaged in or connected with the movement of any train carrying traffic in the District of Columbia, or in any Territory, or carrying interstate or foreign traffic. (See Rule 56.)

(b) Sec. 2. The requirement for ten consecutive hours off [114] duty applies only to such em-

ployees as have been on duty for sixteen consecutive hours. The requirement for eight consecutive hours off duty applies only to employees who have not been on duty sixteen consecutive hours, but have been on duty sixteen hours in the aggregate out of a twenty-four-hour period. Such twenty-four-period begins at the time the employee first goes on duty after having had at least eight consecutive hours off duty. The term "on duty" includes all the time during which the employee is performing service, or is held responsible for performance of service. An employee goes "on duty" at the time he begins to perform service or at which he is required to be in readiness to perform service, and goes "off duty" at the time he is relieved from service and from responsibility for performance of service. (Qualified by Rule 74.)

(c) The act does not specify the classes of employees that are subject to its terms. All employees engaged in or connected with the movement of any train as described in section 1 are within its scope. Train dispatchers, conductors, engineers, telegraphers, firemen, brakemen, train baggagemen who, by rules of carriers, are required to perform any duty in connection with the movement of trains, yardmen, switch-tenders, tower-men, block-signal operators, etc., come within the provisions of the statute. (Qualified by Rules 108 and 275; see also Rule 88.)

(d) The proviso in section 2 covers every employee who, by the use of the telegraph or telephone, handles orders pertaining to or affecting train move-

ments. In order to preserve the obvious intent of the law this provision must be construed to include all employees, who, by the use of an electrical current, handle train orders or signals which control movements of trains. (See Rule 88.) · [115]

(e) The prime purpose of this law is to secure additional safety by preventing employees from working longer hours than those specified in the act. Therefore a telegraph or telephone operator who is employed in a night and day office may not be required to perform duty in any capacity or of any kind beyond nine hours of total service in any twenty-four-hour period.

(f) The phrase "towers, offices, places, and stations" is interpreted to mean particular and definite locations. The purpose of the law and of the proviso for nine hours of service may not be avoided by erecting offices, stations, depots, or buildings in close proximity to each other and operating from one a part of the day while the other is closed, and *vice versa*.

The statute is remedial in its intent and must have a broad construction, so that the purpose of the Congress may not be defeated.

(g) The Commission interprets the phrase "continuously operated night and day" as applying to all offices, places, and stations operated during a portion of the day and a portion of the night a total of more than thirteen hours.

The phrase "operated only during the daytime" refers to stations which are operated not to exceed thirteen hours in a twenty-four-period, and is not

considered as meaning that the operator thereat may be employed only during the daytime.

(h) The act provides that operators employed at night and day stations or at daytime stations may in case of emergency be required to work four additional hours on not exceeding three days in any week. Manifestly, the emergency must be real and one against which the carrier cannot guard.

“In any week” is construed to mean in any calendar week, beginning with Sunday.

(i) Sec. 3. The instances in which the act will not apply [116] include only such occurrences as could not be guarded against; those which involved no neglect or lack of precaution on the part of the carrier, its agents, or officers; and they serve to waive the application of the law to employees on trains only until such employees, so delayed, reach a terminal or relay point. (See Rule 88.)

“Casualty,” like its synonyms “accident” and “misfortune,” may proceed or result from negligence or other cause known or unknown. (Words and Phrases Judicially Defined, vol. 2, 1003.)

Act of God. Any accident due to natural causes directly and exclusively without human intervention, such as could not have been prevented by any amount of foresight, and pains, and care reasonable to have been expected. (Bouvier’s Law Dictionary, vol. 1, 79.)

(j) It will be noted that the penalties for violation of this act are against the “common carriers, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty” in

violation of the law. It is clear that the officers and agents of carriers who are liable to the penalties provided in the act are those who have official direction or control of the employees; and that the penalties do not attach to the employees who, subject to such supervision or control, perform the service prohibited.

(k) Sec. 4. To enforce this act the Interstate Commerce Commission has all the powers which have been granted to it for the enforcement of the act to regulate commerce, including authority to appoint employees, to require reports, to examine books, papers, and documents, to administer oaths, to issue subpoenas, and to interrogate witnesses. [117]
February 12, 1912.

342. HOURS-OF-SERVICE LAW.—A trainman required by the rules of the carrier, in conjunction with his duties as trainman, to send, receive or deliver orders affecting the movement of trains comes within the proviso of section 2 of the hours-of-service act, and therefore a carrier may not require a trainman, who has been on duty longer than the limit of time fixed for a telegraph or telephone operator, to send, receive, or deliver orders affecting the movement of trains as a part of the duties regularly assigned to him.

But upon inquiry whether the practice of requiring conductors of trains delayed at stations where there is no regularly assigned telegraph or telephone operator on duty, and conductors of trains about to be overtaken by superior trains, to telephone or telegraph the train dispatcher for instructions is in ac-

cord with the act and with the Commission's order of interpretation of June 25, 1908, Held, That a trainman who has been on duty for more than 9 hours or for more than 13 hours is not prohibited from occasionally using the telegraph or telephone to meet an emergency. [118]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Assignment of Errors.

Comes now the defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above-en-

titled causes, petition for which writ of error is filed at the same time with this assignment of errors.

I.

The Trial Court erred in instructing the jury as follows:

“In the two cases, gentlemen of the jury of the United States of America against San Pedro, Los Angeles & Salt Lake Railroad Company—one of them is numbered 106 and the other 243—which, by reason of their consolidation, have been tried together, the facts are agreed upon. There is no controversy but that in all of the cases mentioned in the complaint—both complaints—the employees named in each count were permitted to remain on service for periods longer than those allowed by the statute. In each case the defendant has sought to justify the detention or the allowing of these employees to remain on service. The facts are agreed upon, and hence it is a matter of law for the Court to determine. [119] And upon these agreed facts I shall hold, and do hold, as matter of law, that none of the defenses to any of the causes of action, except the fourth cause of action in complaint number 106, are good. The Court therefore instructs you—and it is your duty to obey the instructions of the Court—to find in favor of the plaintiff on each count of the complaint in each case, except the fourth count or the fourth cause of action in the complaint in case 106, and on that cause of action you will return a verdict in favor of the defendant. Submit the form of verdict to the jury, and let one of your number be selected as foreman and let him sign the verdict.”

II.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the first cause of action in case 106.

III.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the second cause of action in case 106.

IV.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the third cause of action in case 106.

V.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 1st cause of action in case 243.

VI.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 2nd cause of action in case 243. [120]

VII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 3d cause of action in case 243.

VIII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 4th cause of action in case 243.

IX.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 5th cause of action in case 243.

X.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 6th cause of action in case 243.

XI.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 7th cause of action in case 243.

XII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 8th cause of action in case 243.

XIII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 9th cause of action in case 243.

XIV.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 10th cause of action in case 243. [121]

XV.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 11th cause of action in case 243.

XVI.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 12th cause of action in case 243.

XVII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 13th cause of action in case 243.

XVIII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 14th cause of action in case 243.

XIX.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 15th cause of action in case 243.

XX.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 16th cause of action in case 243.

XXI.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 17th cause of action in case 243.

XXII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 18th cause of action in case 243. [122]

XXIII.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 19th cause of action in case 243.

XXIV.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 20th cause of action in case 243.

XXV.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 21st cause of action in case 243.

XXVI.

The Court erred in directing the jury to find a verdict in favor of the plaintiff on the 22d cause of action in case 243.

XXVII.

The Court erred in overruling and denying the defendant's motion for a new trial.

PENNEL CHERRINGTON,

Attorney for Defendant.

And upon the foregoing assignment of errors, and upon the record in said causes, the defendant **prays** that said verdict and judgment be reversed.

Dated March 31, 1914.

PENNEL CHERRINGTON,

Attorney for Defendant. [123]

Service of the foregoing Assignment of Errors is hereby admitted, and a copy thereof received, this 2nd day of April, 1914.

ALBERT SCHOONOVER,

U. S. Atty.,

HARRY R. ARCHBALD,

Asst. U. S. Atty.,

Attorneys for Plaintiff.

[Endorsed]: No. 106 and 243 Cons. U. S. District Court, Ninth District, Southern District of California. United States of America, Pl., vs. San Pedro, Los Angeles and Salt Lake R. R. Co., Defendant. Assignment of Errors. Filed Apr. 2, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [124]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Petition for Writ of Error and Supersedeas.

San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation, defendant in the above-entitled consolidated causes, feeling itself aggrieved by the verdict of the jury and the judgment entered on October 8th, 1913, comes now, by Pennel Cherrington, its Attorney, and files herewith an Assignment of Errors, and petitions said Court for an order allowing said defendant to procure a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the

United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the termination of said writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

Dated, March 31, 1914.

PENNEL CHERRINGTON,
Attorney for Defendant. [125]

Service of the within Petition is hereby admitted, and a copy thereof received, this 2d day of April, 1914.

ALBERT SCHOONOVER,
U. S. Atty.,
HARRY R. ARCHBALD,
Asst. U. S. Atty.,
Attorneys for Plaintiff.

[Endorsed]: No. 106 and 243, Cons. U. S. District Court, Ninth District, Southern District of California. United States of America, Plaintiff, vs. San Pedro, Los Angeles and Salt Lake R. R. Co., Defendant. Petition for Writ of Error and Supersedeas. Filed Apr. 2, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [126]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Order Allowing Writ of Error.

Upon motion of Pennel Cherrington, attorney for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the United States Circuit Court for the Ninth Circuit, the verdict and judgment heretofore entered herein.

Dated April 2d, 1914, at Chambers.

OLIN WELLBORN,
Judge.

Service of the above Order is hereby admitted, and a copy thereof received, this 2d day of April, 1914.

ALBERT SCHOONOVER,

HARRY R. ARCHBALD,

Attorneys for Plaintiff.

[Endorsed]: No. 106 and 243, Cons. U. S. District Court, Ninth District, Southern District of California. United States of America, [127] Pl., vs. San Pedro Los Angeles and Salt Lake R. R. Co., Defendant. Order Allowing Writ of Error. Filed Apr. 2, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles Cal., Solicitor for Defendant. [128]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Order Staying Proceedings.

The defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, having this day filed its petition for a writ of error from the verdict and judgment made and entered herein to the United States Circuit Court of Appeals for the Ninth Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of the security which the defendant should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and said petition having this day been duly allowed—

NOW, THEREFORE, it is ordered that upon said defendant filing with the Clerk of this Court a good and sufficient bond in the sum of Six Thousand Dollars (\$6,000.00), to the effect that if the said defendant and plaintiff in error shall prosecute the said writ of error with effect and answer all damages and costs if it fails to make its plea good, then the said obligation to be void, else to remain in full force and

virtue, the said Bond to be approved by the clerk of this Court, that all further proceedings [129] in this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals.

Dated, April 2d, 1914, at Chambers.

OLIN WELLBORN,
Judge.

Service of a copy of the above order is hereby admitted, this 2d day of April, 1914.

ALBERT SCHOONOVER,
HARRY R. ARCHBALD,
Attorneys for Plaintiff.

[Endorsed]: No. 106 and 243, Cons. U. S. District Court, Ninth District, Southern District of California. United States of America, Pl., vs. San Pedro, Los Angeles and Salt Lake R. R. Co., Defendant. Order Staying Proceedings. Filed Apr. 2, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [130]

*In the United States District Court for the Southern
District of California, Southern Division.*

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,
Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, San Pedro, Los Angeles & Salt Lake Rail-
road Company, a corporation, as principal, and
National Surety Company of New York, as surety,
are held and firmly bound unto The United States
of America, the plaintiff above named, in the sum
of Six Thousand Dollars (\$6,000.00), to be paid to
said The United States of America, to which pay-
ment, well and truly to be made, we *bond* ourselves,
jointly and severally, and our and each of our suc-

cessors and assigns, firmly by these presents.

Sealed with our seals, and dated this 2 day of April, A. D. 1914.

WHEREAS, the above-named defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled consolidated causes by the United States District Court for the Southern District of California, Southern Division, rendered and entered in said causes on the 8th day of October, 1913.

NOW THEREFORE, the condition of this obligation is such that if the above-named San Pedro, Los Angeles & Salt Lake Railroad [131] Company shall prosecute said writ to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

SAN PEDRO, LOS ANGELES & SALT
LAKE RAILROAD COMPANY,

By H. L. NUTT,

Its General Manager.

NATIONAL SURETY COMPANY OF
NEW YORK.

By CHAS. SEYLER, Jr.,

Its Attorney in Fact.

Affidavit and Acknowledgment by Surety Company.

State of California,

County of Los Angeles,—ss.

On this 2d day of April, A. D. 1914, before me personally came Chas. Seyler, Jr., known to me to be

the Attorney-in-Fact of the National Surety Company, the corporation described in and which executed the within Bond as a Surety thereon, and who, being duly sworn, did depose and say that he signed his name thereto by order and authority of the Board of Directors of said company, and that he affixed its Corporate Seal thereto by like order and authority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, the day and year first above written.

[Seal]

HAZEL JONES,

Notary Public in and for Los Angeles County.

Approved:

OLIN WELLBORN,

Judge. [132]

[Endorsed]: Nos. 106 and 243, Civil. U. S. District Court, Ninth District, Southern District of California. The United States of America vs. San Pedro, Los Angeles & Salt Lake Railroad Co., Defendant. Bond. Filed Apr. 3, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Pennel Cherrington, 502-4 Pacific Electric Bldg., Los Angeles, Cal., Solicitor for Defendant. [133]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

CLERK'S OFFICE.

Two Cases—Nos. 106 and 243 Civil, Consolidated.

THE UNITED STATES OF AMERICA

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY.

Praeceptum [for Certified Copy of Record].

To the Clerk of Said Court:

Sir: Please issue a certified copy of the record in the above-entitled consolidated causes, consisting of—

Judgment-roll,

Bill of Exceptions,

Petition for Writ of Error,

Assignment of Errors,

Order Denying Motion for New Trial,

Supersedeas Bond,

Writ of Error,

Order Allowing Writ of Error,

Citation in Error,

—and Defendant's Exhibit; said record to be certified under the hand of the Clerk and the seal of the court.

Dated this 3d day of April, 1914.

PENNEL CHERRINGTON,

Attorney for Defendant.

[Endorsed]: Nos. 106 and 243, Consolidated. U. S. District Court, Southern District of California, Southern Division. The United States of America v. San Pedro, Los Angeles & Salt Lake Railroad [134] Co. Praeceptum for Record. Filed Apr. 4, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [135]

[Certificate of Clerk U. S. District Court to Transcript of Record, etc.]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

(Consolidated.)

No. 106—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

No. 243—Civil.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAN PEDRO, LOS ANGELES & SALT LAKE
RAILROAD COMPANY,

Defendant.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and thirty-five (135) typewritten pages, numbered from 1 to 135 inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Judgment-roll, order Denying Motion for New Trial, Bill of Exceptions, Defendant's Exhibit, Assignment of Errors, Petition for Writ of Error, Order Allowing Writ of Error, Order Staying Proceedings, Supersedeas Bond and Praecipe for Transcript, in the above and therein-entitled causes, and that the same together constitute the record in said consolidated cause, as specified in the said Praecipe filed in my office on behalf of the plaintiff in error by its attorney of record. [136]

I do further certify that the cost of the foregoing record is \$72.50, the amount whereof has been paid me by the San Pedro, Los Angeles & Salt Lake Railroad Company, the plaintiff in error in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 22d day of April, in the year of our Lord one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-eighth.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California. [137]

[Endorsed]: No. 2412. United States Circuit Court of Appeals for the Ninth Circuit. San Pedro, Los Angeles & Salt Lake Railroad Company, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Received and filed April 23, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

